Australian Government

Migration Review Tribunal · Refugee Review Tribunal

MINUTES of the QUEENSLAND COMMUNITY LIASION COMMITTEE MEETING
1:00pm 18 November 2011
Hearing Room 7, Level 4, 119 North Quay, Brisbane

Attendee	Organisation
Amanda MacDonald (Chair)	Deputy Principal Member, MRT-RRT
Marina Osmo (Minute-taker)	Registry Manager, MRT-RRT
Don Smyth	Senior Member, MRT-RRT
Fraser Syme	Queensland Member, MRT-RRT
Adrian McCabe	Department of Immigration and Citizenship
Cecilia Barassi-Rubio	Immigrant Women's Support Service
David Watkins	Migration Institute of Australia
Elaine Loh	Commonwealth Ombudsman's Office
Jan Noakes	St Vincent de Paul Society
Karen Dare	Community QLD
Raquel Aldunate	Refugee and Immigration Legal Service
Stanley Shneider	Migration Institute of Australia
Tracey Foley	Amnesty International Australia

1. Welcome

Amanda MacDonald welcomed participants and thanked them for attending.

Ms MacDonald acknowledged the traditional owners and custodians of the land, the Jagera and Turrbal peoples and paid respect to the Elders, past, present and future. Ms MacDonald extended respect to Indigenous men and women who for thousands of years have preserved the culture and practices of Indigenous nations across their countries.

Introductions were made around the table for the benefit of new participants.

2. Apologies

Amanda MacDonald noted the following apologies:

Apology	Organisation
Gabrielle Pavia	Migration Alliance
Leesa Swan	Migration Alliance
Matthew Dunn	Queensland Law Society
Matthew Bienstock	Refugee Claimants Support Centre
Naomi Frampton	Anglicare Refugee Migrant Services/Spiritus
Sarah Grealy	Mater Health Services
William Mitchell	Townsville Community Legal Service Inc

3. Minutes of previous meeting and business arising

It was noted in the previous meeting notes that the date of the prior meeting was 24 November 2010, not 2011.

The minutes of the last meeting held in Brisbane on 15 April 2011 were accepted as an accurate record.

Amanda MacDonald advised that the tribunals will host an MRT Open Day during Law Week in 2012. This was considered more appropriate as Queensland has a significantly larger MRT caseload. Consideration will be given to hosting an RRT Open day in the future.

4. Tribunals' report

Amanda MacDonald provided an update on new initiatives and developments at the tribunals since the last meeting in April.

Member recruitment

Ms MacDonald updated the committee on the tribunals' recent recruitment round to appoint new members. As a result of the selection exercise the tribunals appointed 23 new members from 1 July 2011, comprising one senior member, 10 full-time members and 12 part-time members. In addition, four full-time members were promoted to senior members.

In the Queensland office there is now one senior member, 3 full-time members and 6 part-time members. The new membership has increased the tribunals' capacity across the country, particularly in the smaller Brisbane and Adelaide offices. The tribunals now have a dedicated office, tribunal staff and a senior member based in Brisbane for the first time.

New member induction

Amanda MacDonald informed the committee about the induction program for new members. The program has assisted new members to understand their role as a member of the tribunals, including the expectations and requirements for performance, standards of behaviour and general conduct.

The first four days of induction in July focussed on providing the members with an overview of the tribunals and an introduction to migration law. A further four days of induction training was delivered in October to provide an introduction to the RRT and protection visa refusals. New members have now taken on both MRT and RRT cases. Their caseload will gradually increase in volume and complexity with support from their mentors, senior members and the tribunals' ongoing professional development program.

Members' professional development

Amanda MacDonald advised that with the appointment of a new Assistant Director of Professional Development, Catherine Goodwin, the tribunals are looking to develop a more strategic program that makes training sessions more targeted and accessible to members.

A training package and manual is being prepared by Professor Jane McAdam for members on applying the new *Migration Amendment (Complementary Protection) Act 2011,* which was passed on 19 September 2011 and is expected to commence in late March or early April 2012. In addition, the tribunals will develop guidelines on how to manage cases that pre-date the legislation. This will be required as Complementary Protection will apply to all cases not yet finally determined at the time of commencement.

Ms MacDonald will include more information about this in the monthly Community Liaison updates as the program is developed.

Ms MacDonald invited the committee to provide suggestions at any time on professional development that would be of benefit to tribunal members. Ms MacDonald will continue to update the committee on member professional development through the monthly Community Liaison updates.

Fee changes

Amanda MacDonald informed the committee about changes introduced through the 2011-12 Budget to MRT and RRT application fees. The fees increased by 10% from 1 July 2011, from $1,400 to $1,540. Under the new arrangements, 50% of the MRT application fee rather than the full application fee is refunded if the MRT sets aside, varies or remits the primary decision. A reduced fee of 50% is payable for MRT applicants in severe financial hardship, rather than a full waiver. These changes were amendments to the migration regulations with effect from 1 July 2011. A Senate motion to disallow the amendments in relation to fee waivers and refunds was not supported by the Senate on 21 September 2011.

Ms MacDonald advised that the impact of the fee increases does not apply to the same extent for RRT applicants. The RRT 'application fee' is a post-decision fee only payable if the RRT decides that a person is not a refugee. Payment of the fee is not a requirement for applying to the RRT. No fee is required for a person in immigration detention applying to the RRT for the review of a bridging visa decision. There is no change to this under the new fee structure.

Ms MacDonald advised the increase in fees was necessary to offset increased costs faced by the tribunals. The MRT application fee had not increased since the MRT was established in 1999 and the RRT application fee had not increased since 2003. The tribunals' caseload has increased substantially and the organisation has been incurring operating losses. The increase in fees will offset losses this financial year and in forward years. Ms MacDonald emphasised the tribunals need to be sustainable and have sufficient resources to meet the commitment to make just, economical and timely decisions, and hopefully reduce applicant waiting times.

Caseload and Constitution Policy

Amanda MacDonald advised that cases are allocated to members according to priorities set by legislation and in directions issued by the Principal Member. The Principal Member Direction on Caseload and Constitution for 2011-12 sets an objective for the tribunals to finalise at least 11,500 cases in 2011- 12.

This target is 25% higher than the finalisations achieved in 2010-11 and represents the tribunals' commitment to slowing the growth of cases on hand. The target is achievable, subject to the extent to which members are unavailable due to their undertaking Independent Protection Assessment work.

Annual report

Amanda MacDonald informed the committee that the tribunals' 2010-11 annual report was tabled in Parliament on 14 October. The report highlights significant issues and factors influencing the tribunals' performance during the 2010-11 financial year and the outlook for 2011-12.

Ms MacDonald recommended committee members read the annual report if they have the opportunity and suggested they may be interested in the summaries of notable judicial decisions which have impacted the tribunals' decision making or procedures. A link to the annual report was included the October Community Liaison update and hard copies were also available at the meeting.

Interpreters' handbook

Amanda MacDonald advised that the tribunals had recently revised its interpreters' handbook. The handbook is produced for interpreters and sets out the tribunals' requirements for interpreting at hearings, the procedural aspects of the hearing, the role and responsibilities of interpreters, and information about the specialised nature of the tribunals' work.

The second edition includes new and updated information, and a new structure to make the information easier to navigate. The new handbook is available on the tribunals' website and a link will be included in the next Community Liaison update.

Events at the tribunals

Amanda MacDonald updated the committee on significant events held at the tribunals since the last meeting in April:

- During Refugee Week in June the Refugee Review Tribunal held open days in Melbourne and Sydney. The tribunal members and staff gave short presentations and conducted a mock hearing to give participants an insight into the work of the tribunal and how hearings are conducted.
- In June the Victorian Registry hosted a visit from the Parliamentary Secretary for Immigration and Citizenship, the Hon Senator Kate Lundy.
- In July Mr Ian McConville the High Commissioner to Nigeria visited the tribunals. Mr McConville spoke to tribunal members and country advice staff about issues affecting the

region, and also his experiences from Pakistan, where he worked previously. Both the members and staff who participated found the session extremely valuable and informative.

Amanda MacDonald invited committee members to raise matters covered in the tribunals' report.

Cecilia Barassi-Rubio asked for more information on professional development within the tribunals. Amanda MacDonald provided details of the various components of members' professional development program, including a National Conference held every 18 months or 2 years, where a range of speakers are invited to present. She noted that the Chief Justice of the High Court, Justice French and Andrew Metcalf, Secretary of the Department of Immigration and Citizenship were just two of the speakers at the 2010 National Conference.

Stanley Shneider queried why it sometimes appeared that two members could make different decisions given the same set of facts. Amanda MacDonald responded that consistency of decision making is always a challenge for any agency, although the tribunals encourage consistent decisions in like matters through a number of mechanisms, including member led discussion forums.

Tracey Foley asked about the tribunal's accountability mechanisms. Amanda MacDonald advised that judicial review provides accountability and noted that the number of cases coming back from the courts have greatly reduced in recent years, which is a good indication that the tribunals are performing well. The tribunals' hold twice yearly liaison meetings with the Department of Immigration and Citizenship where the department is able to raise any concerns and the feedback from these liaison meetings is that the tribunals' decisions are robust. Ms MacDonald also advised that the tribunals have a member performance review and assessment process, which aims to enhance member performance by identifying any areas for improvement or where training is needed.

Raquel Aldunate raised concerns about the new fee structure. Ms Aldunate advised that the Refugee and Immigration Legal Service had made submissions and raised concerns as it was felt that this change would have a significant impact on their clients. Ms Aldunate suggested that there should be discretion to remit the fee if the tribunal made a decision without reference to any additional material. Ms Aldunate and Ms Dare advised that their organisations undertake fundraising to help clients raise the funds to apply to the tribunal. Ms

MacDonald thanked them for their comments and noted that it was unlikely that there would be any changes to the fee structure.

Ms Aldunate also advised that the information on the website is confusing in relation to how much is refunded if a fee reduction is granted. Ms MacDonald advised that she will look at this aspect and report back.

Adrian McCabe asked if there was a difference between clients in immigration facilities or in community detention. Ms MacDonald advised that there is no difference from the tribunals' perspective – all applicants are treated as applicants in detention.

5. Caseloads and statistics

The MRT and RRT caseload report as at 31 October 2011 was distributed at the outset of the meeting. Don Smyth provided the committee with an overview of the tribunals' caseload for the financial year to 31 October:

- Nationally 4,877 cases have been lodged for the financial year to 31 October 2011, 14% more than for the same period last year (4,279). The total comprised:
    - 3,837 MRT lodgements – 17% more than 31 October 2010; and
    - 1,040 RRT lodgements – 5% more than 31 October 2010.
- 3,041 decisions have been made for the financial year to 31 October 2011, 13% more than for the same period last year (2,687). The total comprised:
    - 2,225 MRT decisions – 20% more than 31 October 2010; and
    - 826 RRT decisions – 1% less than 31 October 2010.
- The clearance rate for the financial year to 31 October 2011 was 62% – 58% for the MRT and 78% for the RRT.
- 13,726 cases were on hand to 31 October 2011, 46% more than for the same period last year (9,379 cases). The total comprised:
    - 12,399 MRT cases, 3,921 or 46% more than for the same period last year (8,478); and
    - 1,327 RRT cases, 426 or 47% more than for the same period last year (901).
- 10,633 MRT cases (86%) remained unconstituted at 31 October 2011. The average age of these cases since lodgement was 290 days; 34% (4,190) were over 365 days old.
- 479 RRT cases (36%) remained unconstituted at 31 October 2011.

- RRT compliance with the 90 day standard for the financial year to 31 October 2011 was 52% (with cases taking on average 119 days to decision) compared to 76% for the same period last year (with cases taking on average 89 days to decision). These figures continue to demonstrate the impact which the departure of experienced members with significant RRT experience to Independent Protection Assessment Office is having on the processing of the RRT caseload.

Don Smyth provided the following statistics for the financial year as at 31 October 2011 where the residential state of the review applicant was given as Queensland:

- For the financial year to 31 October 2011, applications lodged by review applicants residing in Queensland made up 15% (574) of all MRT lodgements (3,837) and 4% (45) of all RRT lodgements (1,040). This compares with 14% (456) of all MRT lodgements (3,290) and 5% (53) of all RRT lodgements (989) for the same period last year. For the full year 2010-11, review applications from those residing in Queensland were 1,437 (14% of 10,313) for MRT and 137 (5% of 2,968) for RRT.
- There has been a 26% increase in MRT and a 15% decrease in RRT applications lodged this financial year from those applicants residing in Queensland compared to the same period last year.
- The top five MRT Queensland lodgement case categories for the financial year to date are:
    - student refusals (265 or 46% of the total MRT Queensland lodgements);
    - student cancellations (91 or 16%);
    - partner refusals (37 or 6%);
    - temporary business refusals (33 or 6%); and
    - permanent business refusals (33 or 6%). Student refusals and student cancellations remain in the top two positions.
- Student refusals have increased by 102% from the same period last year while student visa cancellations have decreased by 7%. Combined, student visa refusals and student visa cancellations comprise 62% of the MRT caseload for the year to date.
- For the year to 31 October 2011, the top six RRT Queensland lodgements by source country were:
    - Fiji 10 (22%);
    - India 6 (13%);

    - Zimbabwe 6 (13%);
    - China (PRC) 4 (9%);
    - Sri Lanka 2 (4%); and
    - Vietnam 2 (4%).
- In comparison, for the 2010-11 financial year, 137 RRT Queensland lodgements were received with the top five source countries being Fiji 31 (23%); India 26 (19%), China (PRC) 15 (11%); Zimbabwe 10 (7%); and Sri Lanka 7 (5%).
- At 31 October 2011, there were 1,765 active cases where the applicant resided in Queensland (1,709 MRT cases and 56 RRT cases). This represents 12.9% of the total caseload of the tribunals. Of those, 234 cases (13%) were with members. The remaining 1,531 cases (87%) were awaiting constitution.
- In the year to 31 October 2011, 332 decisions were made on MRT reviews where the residential state of the review applicant was given as Queensland. This was up 48% compared to the same period last year (224 decisions). The average time from lodgement to decision was 195 calendar days for visa cancellations and 416 calendar days for all other MRT decisions. In the same period, 41 RRT decisions were made on reviews where the residential state of the review applicant was given as Queensland. This was up 5% compared to the same period last year (39 decisions). The average time from receipt of the Departmental documents to decision was 107 calendar days.
- In the year to 31 October 2011, there were 32 video hearings (involving applicants or witnesses outside Brisbane) and 246 face to face hearings scheduled by members in Brisbane. In addition, 47 video hearings were scheduled by members in Sydney and Melbourne where the applicant or a witness was in Brisbane. For the same period in 2010-11, there were 18 video hearings (involving applicants or witnesses outside Brisbane) and 126 face to face hearings scheduled by members in Brisbane. In addition, 66 video hearings were scheduled by members in Sydney and Melbourne where the applicant or a witness was in Brisbane.

Raquel Aldunate asked about the tribunal's order of processing. Amanda MacDonald advised that the Caseload and Constitution policy provides for the order of processing. At present the partner caseload may be skewed because cases lodged after July 2010 when the definition of 'spouse' changed have been used in the training of new members. Ms MacDonald advised that as time goes by the order of processing will even out again. Ms MacDonald noted that the partner caseload generates the most enquiries to the registry and as such is of great concern.

The tribunals' are trying to work out ways to progress these cases more quickly. Ms MacDonald also advised that the processing times calculator on the website has been found to be inaccurate because of these batching exercises. It is the tribunals' intention to replace this with an indicative table.

6. Practitioner issues

There were no practitioner issues raised.

7. Other business

7.1 Publication of tribunal decisions

Amanda MacDonald introduced matters highlighted in the issues paper circulated with the agenda regarding the publication of tribunal decisions. The tribunals commit to publish at least 40% of decisions to ensure the openness and accountability of decision-making. Ms MacDonald discussed how published decisions are selected, the removal of identifying information and the challenges around publishing decisions. Ms MacDonald invited the committee to provide feedback on the publication of decisions.

Raquel Aldunate stated that she has received very positive feedback and that her caseworkers have found the information very useful. Ms Aldunate advised that the range of decisions published is good.

Amanda MacDonald invited the committee to email through any further suggestions by the end of November.

7.2 Publication of *Précis*

Amanda MacDonald introduced matters highlighted in the issues paper circulated with the agenda regarding the publication of *Précis*. The tribunals produce a monthly bulletin called *Précis,* which provides a wider perspective on the factors that influence the tribunals' decisions and processes. Ms MacDonald gave an overview of the content of *Précis*, the selection of decisions and judgements, and the inclusion of country advice. Ms MacDonald invited the committee to provide feedback on *Précis*.

Raquel Aldunate advised that she has found *Précis* to be generally a good tool, providing useful information. It is a good source of knowledge for caseworkers and the subscription option is a good idea. However, Ms Aldunate advised that the subscription process is not very straightforward on the tribunals' website and the search function is not very friendly. Ms Aldunate advised that caseworkers find it easier to search for decisions on AustLII. Ms Aldunate advised that she will respond to Ms MacDonald more fully in writing. Ms MacDonald thanked Ms Aldunate for her feedback.

Amanda MacDonald invited the committee to email through any further suggestions by the end of November.

7.3 2012 meeting calendar

Amanda MacDonald invited the committee to comment on the 2012 meeting schedule circulated with the agenda. The schedule was agreed by the committee.

8. Date of next meeting

The next meeting will be held on Friday 27 April 2012 from 1:00pm in the same location.

Stanley Shneider thanked the tribunals for a most valuable forum.

Amanda MacDonald thanked everyone for their attendance and contribution, and closed the meeting at 2:30pm.