

Notes of the Brisbane MRT/RRT Liaison Meeting

Wednesday, 9 June 2010, 2.30pm

Hearing Room 7, Level 14, 119 North Quay, Brisbane

Present:

Denis O'Brien, Principal Member MRT/RRT

Irene O'Connell, Senior Member MRT/RRT

Glen Cranwell, Member MRT/RRT

Tracy Worrall, QLD Program of Assistance to Survivors of Torture & Trauma

Fernanda Torressi, QLD Program of Assistance to Survivors of Torture & Trauma

Khalid Mdallal, St Vincent de Paul Society

Angela Julian-Armitage, Migration Institute of Australia QLD

Matthew Bienstock, Refugee Claim & Support service

Chair: Amanda MacDonald, Deputy Principal Member MRT/RRT

Notes: Jonathan Willoughby-Thomas, District Registrar MRT/RRT

1. Welcome and introduction of the new Deputy Principal Member

The Deputy Principal Member (DPM) welcomed everyone and thanked them for their attendance and participation. The DPM introduced herself and also advised that on 1 April 2010, the Governor-General had appointed her as the Deputy Principal Member of the MRT and the RRT for a five year term. She then reiterated the purpose in conducting these meetings as follows:

- to facilitate the distribution and exchange of information in relation to the Tribunals' processes and caseload;
- to provide updates on relevant legislative developments as well as procedural and corporate developments within the Tribunals; and
- to provide the opportunity for discussion of items that may have arisen out of participant's dealings with the Tribunals or that relate to the Tribunals' operations in general.

2. Apologies

Apologies had been received from Helen Fleming, Commonwealth Ombudsman's Office.

3. Notes of the previous meeting and business arising

The DPM apologised for the fact that there were no notes available from the previous meeting. However, there were a couple of items arising from the November meeting for the Tribunals to report on.

Update to Tribunals' Complaints and Compliments page

In response to concerns raised at the November meeting regarding information published about the Tribunals' complaints process, the DPM advised that the Tribunals have updated their 'complaints and compliments' page which now reassures applicants that if a complaint is lodged during a review, it will not affect the outcome of a review. The DPM stressed that any complaint received would be dealt with as a separate matter from the review.

Issue: E-mail communication with applicants and representatives

At the last meeting the Tribunals undertook to develop a proposal on using e-mail communication for case correspondence and to circulate a paper to community liaison members to seek their feedback on this proposal. The DPM advised that the Tribunals are developing a detailed project plan which will be circulated to the group in the near future. However, it is quite a complex matter and considerably more difficult than first thought. Issues that still needed to be addressed include problems sending large attachments via email as well as internet service providers routinely blocking email attachments as 'spam'.

4. Executive Report

The Principal Member (PM) commenced by highlighting some of the Tribunals' key achievements and developments since the last meeting of this group.

Member recruitment

The PM advised that Member positions were advertised in the national press on 7 November 2009. Interviews were conducted during February and March this year, by the Selection Committee (comprising Ms Felicity Hand, Deputy Secretary of DIAC; Mr John Gibson, a community representative and President of the Refugee Council of Australia; Ms Annwyn Godwin, Merit Protection Commissioner, Australian Public Service Commission and the Principal Member).

As a result of this process, on Friday, 4 June the Minister announced the appointment of 43 Members (16 full-time and 27 part-time), including 3 new Members in Brisbane (1 full time and 2 part-time). Members have been appointed for five years from 1 July 2010 to 30 June 2015. The PM named the three new Members appointed in Brisbane and also advised that Member Ricky Johnston had not sought reappointment and would be sadly missed.

The PM stated that planning has begun on induction and training arrangements in preparation for the newly appointed Members who will come on board in July. A key focus is on designing a program which will enable the new Members to quickly get up to speed across a limited range of cases.

Role of the Deputy Principal Member

The PM briefly outlined the role of the new DPM and mentioned that in her role, the DPM has a number of national responsibilities, including Member professional development and stakeholder engagement. He also said that the DPM was cross appointed as the Deputy Principal Member of the MRT and the RRT and that this was the first time that the Tribunals have had a Deputy Principal Member across both Tribunals.

New Web Page for Representatives and authorised recipients

The PM informed the meeting that the Tribunals have published a new web page designed specifically for representatives and authorised recipients. This page provides information, policies and forms of relevance to representatives and authorised recipients. The page includes PDF fillable versions of frequently used

forms that can be edited and saved electronically, as well as a link to a separate page containing answers to frequently asked questions. Another key feature includes links to Tribunal research information, Tribunal decisions and legislation.

Tracy Worrall asked if the Tribunals' application forms (MRT01 and RRT01) were being revised as there was some confusion about where to record the information for the Review Applicant/Visa Applicant on the current forms. She said that in some cases where an Australian family member was sponsoring a visa applicant offshore, the visa applicants name was often entered as the review applicant, which can lead to jurisdictional issues. The DPM advised that the application forms were currently being revised and that comments from external stakeholders would be sought shortly.

The PM said that new page is an enhancement to the information available on the Tribunals' website and that it implements one of the recommendations set out in the Tribunals' Stakeholder Engagement Plan 2010-11. He also advised that the contents of this page will be regularly reviewed and updated and that a comprehensive 'Guide for Representatives' is under development and will be published on the Tribunals' website in the near future.

The PM said that any suggestions or feedback would be gratefully received and that they could be directed to the Tribunals' A/g Director of Policy and Procedures, Marina Osmo. The PM stressed that the Tribunals were trying to provide a service that is helpful to our stakeholders. He also offered participants the opportunity to view the website at the conclusion of the meeting.

Stakeholder Engagement Plan 2010-11

The PM said that the Tribunals' Stakeholder Engagement Plan for 2010-11 is now available on the Tribunals' website.

He outlined that the objectives of the Plan are to:

- enable better access to justice in the conduct of merits review of migration and refugee decisions by improving communication with stakeholders and the information provided about the Tribunals' procedures;

- inform the Tribunals' 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 stakeholders.

The Plan also sets out how the Tribunal will engage with stakeholders and the engagement activities planned for 2010-11 and beyond. The PM thanked participants for their valuable comments and contributions made during the process of shaping the Plan.

Gender Guidelines

Since the last meeting, the Tribunals have published Gender Guidelines. These guidelines will be of use to both Tribunal Members and representatives on gender issues. Wide consultation was conducted on the document, and the PM thanked participants for their valuable comments and contributions made during the process of shaping the policy. The document is now available on the Tribunals' website.

Amended Principal Member Direction

In November 2009, the PM issued an amended Principal Member Direction on putting adverse information orally to applicants at hearings. The Direction seeks to ensure that the statutory procedural fairness code governing the conduct of Tribunal reviews is given full effect and that hearings of the Tribunals are conducted fairly and justly. Principal Member Directions are public documents and are available on the Tribunals' website.

Referrals for Ministerial Intervention

The PM advised the meeting that during February, following revisions made by the Minister to his Ministerial guidelines, he had reissued Tribunal guidance on referrals for Ministerial intervention. One of the key revisions to the policy is the advice that it is generally no longer appropriate to refer cases to the Minister if it appears that an applicant may be eligible to apply for a partner visa onshore. Tribunal Members have been advised that if it appears that a pathway may exist for an applicant to apply for a

further visa onshore, the Member may suggest to the applicant that he or she seek migration advice. The Guidance is publicly available on the Tribunals' website.

Publication of Tribunal decisions and country of origin information

The PM advised that the Tribunals had responded to community requests that a higher number of decisions be published. As at 28 February 2010, 49% of all substantive decisions made during 2009-10 have been published (48% of MRT and 51% of RRT). He said that the Tribunals will make around 9,500 decisions this financial year and that it was not possible to publish all of them. However, we regularly invite our stakeholders to provide input into the types of cases of particular interest to the community and that if the community would like a particular cohort of decisions published, let us know and we would try to oblige.

Regarding publication of RRT country advice, since commencing publication of country advice in January 2009, 882 country advices have been published covering the top 50 RRT source countries from 2004 to mid-2009. The PM stressed that we were focussing our efforts on the major caseload countries.

An update to the technology behind the MRT-RRT website in February 2010 has made it easier for the public to search for, locate and retrieve country advice sorted by topic, relevance and currency. The PM said that any comments on this new service would be welcomed and can be sent directly to Research.Feedback@mrt-rrt.gov.au

Memorandum of Understanding with DFAT

In December 2009, the acting Secretary of the Department of Foreign Affairs and Trade (DFAT) and the PM signed a Memorandum of Understanding (MoU) that formalises the information sharing and liaison relationship between the two agencies.

The PM advised that under this MoU, DFAT assists the Tribunals by providing advice and undertaking overseas enquiries related mainly to RRT cases, but also relating to an increasing number of MRT matters. The MoU sets out the arrangements governing these requests, including target turnaround times and the procedures for requesting assistance from DFAT posts overseas.

Member professional development

The PM outlined the need for professional development and training and stressed that it is essential to the delivery of quality reviews. He mentioned that there has been a substantial investment in learning and development activities by the Tribunals. He said that 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.

The PM listed a number of the recent Member training sessions including:

- Skilled Visas
- Effective use of electronic records such as ICSE
- Laws of general application in the context of refugee status determination
- Time Limited Reviews
- Visa cancellations including student visa cancellations (for new Members)
- Section 91R(3) focus group, and
- Advanced partner cases (new Members)

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

- During March, Dr. Ida Kaplan and Guy Coffey, from the Victorian Foundation for Survivors of Torture, presented a session on dealing with victims of torture and trauma.
- Judge Phillip Williams from the Baltimore Immigration Court (US) gave a presentation to the majority of the membership on the topic 'Making Credibility Determinations of Refugee Claims: The US Model'.
- During February, the Tribunals hosted eight delegates from the New Zealand Refugee Status and Appeals Authority (RSAA). Senior Members Martin Treadwell, Andrew Molloy, Bruce Burson and Martha Roche gave interesting presentations and participated in an open panel discussion with Tribunal Members. Three topics were covered in the course of the afternoon: common claims from Chinese nationals, particular social group claims (homosexuality) and recent claims from Iranian nationals (political/protest claims).

5. Caseload Statistics

Senior Member (SM) Irene O'Connell provided a brief overview of the MRT and RRT caseloads. She noted that we have now split out the individual Queensland statistics as requested by the Queensland Liaison Committee representatives. SM O'Connell advised that the statistics related to the 2009-2010 financial year (as at 31 May 2010) where the residential state of the review applicant is given as Queensland.

With regard to the MRT, the SM said that for the year to 31 May, 930 cases had been lodged by review applicants residing in QLD. The top five lodgement case categories were Partner refusals 155 (17%), Student cancellations 142 (15%), Temporary business refusals 134 (14%), Student refusals 121 (13%) and Skill linked refusals 106 (11%). As at 31 May 2010, 791 cases had been decided of which 299 (38%) were set aside and 337 (43%) affirmed.

With regard to the RRT, the SM said that for the year to 31 May, 89 cases had been lodged by review applicants residing in QLD. The top two QLD RRT lodgement source countries were Fiji 25 (28%) and China (PRC) 20 (22%). With regard to RRT decision outcomes, 13 cases (15%) were set aside and 43 (48%) were affirmed. 71% of decisions were made within 90 calendar days of receipt of the Departmental documents.

Angela Julian-Armitage expressed concerns about what she perceived as the high refusal rate for Christmas Island detainees and asked if the Tribunal dealt with applicants who had been refused on Christmas Island. She also said that to her knowledge, no QLD representatives have access to Christmas Island detainees and they therefore find it difficult to represent them when they are transferred to QLD. The PM advised that Christmas Island cases generally do not come within the RRT's jurisdiction.

Angela Julian-Armitage also asked if we were seeing an increase in applications from Sri Lankans and Iraqis. The DPM confirmed that these two groups were a very small component of the QLD caseload but we would be happy to keep an eye on it and report back to the next meeting if there has been any significant increase.

6. Tribunal's issue paper on constitution policy for 2010-2011

The PM advised that the Tribunals' caseload and constitution policy (PMD 1/2009) is currently under review. He outlined the content and rationale behind the policy and said that the Tribunals have recently circulated an issues paper for internal and external stakeholder consideration and comment. He said that the goal of the issues paper was to inform discussion as part of the review process and encouraged participants to provide comments to the Tribunals within 7-10 days.

Fernanda Torressi enquired as to whether applicants in detention on Christmas Island would be assigned top priority in the new constitution policy and the PM again said that generally these cases do not come within the Tribunal's jurisdiction.

7. Client Service Charter review

The DPM briefly summarised the purpose of the Tribunals' Client Service Charter and then advised that the Tribunals' were currently in the process of reviewing it. She said that any review would include consultations with the community and stakeholders. She said that she will shortly be sending an email to community representatives seeking their comments and feedback.

8. Issues raised by community representatives

The DPM advised that no new issues had been raised prior to the meeting but was happy to discuss any issues raised now. Angela Julian-Armitage raised a concern about the quality of agents that represent applicants before the Tribunals. She said that some agents were not legally qualified and had little idea of the issues involved in the cases. She said that we are dealing with people's lives so the quality of representatives can be a real concern. She said that she had raised these concerns with the MIA. The Principal Member said that all agents must be registered with MARA and if they are, we accept them. He said that the registration and control of migration agents is a Government policy matter and was not really the Tribunals' area of responsibility. However, any substantial complaints that we do receive are provided to MARA or the Department for investigation. Senior Member O'Connell also reminded participants that the Tribunal does maintain a complaints register for such purposes. The PM said that he understood Angela's concerns and he would take them on board.

9. Structure and timing of community liaison meetings

The DPM canvassed the meeting's views on the structure and timing of future Liaison Meetings. Angela Julian-Armitage advised that Friday was not a good day for her. Tracy Worrall said that any day was fine with her. Matthew Bienstock said that Wednesday afternoon was fine with him but would prefer that the meeting was not held in June as it clashed with Refugee Week activities and the end of the financial year. There was general agreement that the title line of the email invitation should clearly state that it refers to the Tribunals' Liaison Meeting as, given the high volume of emails received these days, it is important to see at a glance what the email is about. The DPM said that she would take all of these comments into account when determining the timing of future meetings and the composition of the email invitation.

10. Other business

There were no items of other business.

11. Next meeting and closure

The next meeting will be held on a Wednesday in November 2010, at the same location at a date to be advised. The DPM thanked all attendees for their participation. The meeting closed at approximately 3.40 pm.