

NOTES OF VICTORIAN MRT-RRT COMMUNITY LIAISON MEETING

10:00 am 21 April 2010

Members' Meeting Room, Melbourne

Present: Denis O'Brien–Principal Member–MRT–RRT; Amanda MacDonald–Deputy Principal Member–MRT–RRT; Linda Kirk–Senior Member–MRT–RRT–Melbourne; Peter Murphy–Senior Member MRT–RRT–Melbourne,; Hilary Lovibond–District Registrar–MRT–RRT–Melbourne; Annabelle O'Brien–Director–Refugee and Humanitarian Branch–DIAC; Mary Hanna–Spectrum Migrant Resource Centre; Colin Briton–Red Cross; Stuart Webb–Victoria Legal Aid; Renuka Senanayake–Springvale Monash Legal Service; Bogdana Poljkak–Spectrum Migrant Resource Centre; Rebecca Eckard–Refugee Council; Holly Byrne–Migration Alliance; Peter Antippa– Migration Alliance; Owen Harris– Migration Alliance; Carina Ford–Law Institute of Victoria; Miguel Belmar-Salsas–Victorian Bar; Valerie da Gama Pereira– da Gama Pereira & Associates Ltd.

Chair: Amanda MacDonald–Deputy Principal Member

Notes: Genevieve Cantwell–A/g Executive Officer

1. Welcome

Deputy Principal Member MacDonald opened the meeting and welcomed participants and thanked them for their attendance. She introduced herself and provided a brief background of her employment history with the Tribunals. She advised that she was appointed as the Deputy Principal Member of the MRT and the RRT from 1 April 2010. She explained that she has a number of national responsibilities, including Member professional development and stakeholder engagement.

She noted that the purpose of the Community Liaison meetings was to facilitate the distribution and exchange of information in relation to the Tribunals' processes and caseload, provide updates on relevant legislative developments and procedural and corporate developments within the Tribunals and provide the opportunity for discussion of items arising out of Committee members' dealings with the Tribunals or relating to the Tribunals' operations in general.

2. Apologies

Apologies were received from Paris Aristotle–The Victorian Foundation for Survivors of Torture; Helen Fleming–Commonwealth Ombudsman's Office; Boniface Town–FCG Legal Pty Ltd; Helen Glass– Helen Glass Lawyers; David Manne–Refugee and Immigration Legal Centre Inc and Jose Alvarez–DIAC.

3. Notes of previous meeting and business arising

The last meeting was held on 21 October 2009. The notes of that meeting were circulated and are available on the Tribunals' website at <http://www.mrt-rrt.gov.au>. The notes were accepted as a true and correct record of the meeting.

E-mail communication with applicants and representatives

The Deputy Principal Member noted that it had been advised at the last meeting that the Tribunals would develop a proposal on using e-mail communication for case correspondence and circulate a paper to community liaison members to seek their feedback on this proposal. She reported that a detailed project plan is currently under development and will be circulated to the group in the near future. The Deputy Principal Member said that all comments in relation to this issue, which is a complex one, would be welcomed.

Providing clients with better access to documents

The Deputy Principal Member explained that this item referred to access to documents requested for MRT cases under s.362A of the Migration Act. The Tribunal is currently redesigning the s. 362A request form to provide the option of requesting access be provided in electronic form. This will probably be by CD in most cases as e-mail poses some constraints on the size of files that can be transmitted. The Deputy Principal Member noted that even before the form is re-designed, the Tribunal would seek to accommodate a request for information to be provided electronically if this is noted at the time the request is made.

Genuine documents from Syria, Jordan and Iraq

Annabelle O'Brien, Director Refugee and Humanitarian Branch, DIAC advised that she had reported to the relevant authorities in DIAC, Ms Poljak's issue raised at the previous meeting of the difficulty of applicants from Syria, Jordan and Iraq obtaining genuine documents. Ms O'Brien reiterated that DIAC does not accept fraudulent documents and that it will impact on the decision. She felt it was more prudent to advise DIAC that the applicant(s) are unable to obtain genuine documents. She said that DIAC in some situations may accept Statutory Declarations. The Deputy Principal Member concurred that there was a problem with DIAC finding that passports from Iraq are not valid because they have been obtained using documents DIAC considered to be non-genuine. Ms O'Brien said that DIAC was aware of the problem with obtaining genuine documents and the preference would be not to lodge any documents if there were concerns with their authenticity. Ms Poljak asked Ms O'Brien if

DIAC could issue guidelines advising who are reputable sources and agencies in Syria, Jordan and Iraq to obtain genuine documents from. Ms O'Brien said she would discuss her request with relevant Managers in DIAC.

4. Executive report

The Deputy Principal Member invited the Principal Member to provide the Executive report. In opening the Principal Member stated that he wished to highlight some of the Tribunals' key achievements and developments since the last meeting of this group:

Member recruitment

The Principal Member reported that Member positions were advertised in the national press on 7 November 2009. Interviews were conducted by the Selection Committee (comprising himself, 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) during February and March. The selection exercise is yet to be finalised.

He advised that planning will commence shortly on induction and training arrangements in preparation for possible new Member appointments in July. A key focus will be designing a program which will enable new Members to quickly get up to speed across a limited range of cases.

Role of the Deputy Principal Member

The Principal Member said, as Amanda indicated, she has been appointed as the Deputy Principal Member of the MRT and the RRT for a term of five years. This is the first time that the tribunals have had a Deputy Principal Member across both tribunals. In her Deputy role, Amanda has a number of national responsibilities, including Member professional development and stakeholder engagement.

Amended Principal Member Direction

In November, he said that he had issued an amended Principal Member Direction on putting adverse information orally to applicants. 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

During February, following revisions made by the Minister to his Ministerial guidelines, the Principal Member re-issued Tribunal guidance on referrals for Ministerial intervention. The revised policy includes the following advice:

- 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. Members are 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;
- if an applicant indicates that he or she does not wish to attend a hearing but will be seeking Ministerial intervention, a Member should note this in the statement of decision and reasons and leave it to the applicant to seek such intervention; and
- cases in which the Tribunal determines that it has no jurisdiction to conduct the review should not be referred to the Department as the Minister has no power to intervene.

The Guidance is publicly available on the Tribunals' website.

Publication of Tribunal decisions and country of origin information

The Principal Member reported that 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 commented that the Tribunals regularly invite our stakeholders to provide input into the types of cases of particular interest to the community.

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.

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. He said that comments on this new service are welcomed and can be sent directly to Research.Feedback@mrt-rrt.gov.au

Memorandum of Understanding with DFAT

The Principal Member advised that in December 2009, he and the acting Secretary of the Department of Foreign Affairs and Trade (DFAT) signed a Memorandum of Understanding (MoU) that formalises the information sharing and liaison relationship between the two agencies.

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. Requests to DFAT, including all requests to overseas posts, are coordinated centrally through the People Smuggling, Refugee and Immigration Section in Canberra.

The MoU also provides for information sharing through such things as briefings for DFAT officers before they depart for overseas postings, and for DFAT graduate trainees. Selected DFAT Heads of Mission also visit the Tribunals during mid-term consultations to speak with Members and Country Advice on issues relevant to MRT and RRT reviews.

Member professional development

Professional development and training is essential to the delivery of quality reviews and there has been a substantial investment in learning and development activities by the Tribunals. The Principal Member said 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.

Recent sessions in Melbourne have included:

- Laws of general application in the context of refugee status determination
- Time Limited Reviews
- Visa Cancellations including student visa cancellations (new members)
- section 91R(3) focus group
- Advanced partner cases (new members).

Members 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;
- Dr Julie Debeljak and Professor Susan Kneebone, of the Faculty of Law at Monash University gave a presentation to Melbourne Members on human trafficking.;
- 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’; and
- During February, 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 and Statistics

The MRT and RRT caseload report as at 31 March 2010 was distributed to the meeting participants prior to Senior Member Kirk’s item.

5.1 MRT

The Deputy Principal Member introduced Senior Member Kirk and handed over to her to report on the MRT caseload and statistics report. She highlighted the following information from the MRT-RRT caseload report-31 March 2010.

Lodgements

As at 31 March 2010 there were a total of 5,996 lodgements. The top four MRT lodgement case categories were Student refusals 1,079 (18%), Skilled linked refusals 1,000 (17%), Partner refusal 901 (15%) and Student cancellation 650 (11%). This represented 61% of the total lodgement caseload.

Active cases

As at 31 March 2010 there were 6, 469 active MRT cases. Of those cases 1,957 (30%) were with Members and 4,512 (70%) were awaiting constitution.

Decisions

As at 31 March 2010 the MRT had decided 5,823 cases. Of these cases 45% were set aside, 35% were affirmed, 11% were withdrawn and 9% were other reasons. The average time from lodgement to decision in Victoria was 123 calendar days for visa cancellations and 306 calendar days for all other MRT decisions.

At the completion of her item Senior Member Kirk introduced Senior Member Murphy to provide the RRT caseload and statistics report. Senior Member Murphy outlined the following:

5.2 RRT

Lodgements

March saw the equal highest number of RRT lodgements in any month this financial year at 206 applications. However, this represented an 18% decrease in lodgements compared to the same time last year. For the year to 31 March 2010, 1625 applications have been lodged, which represented 18% less than the same time last year. The top five RRT lodgements by source countries were China 552 (34%), Malaysia 52 (9%), Fiji 113 (7%), India 109 (7%) and Indonesia 92 (6%).

Active cases:

As at 31 March 2010, there were 648 active cases. This was 12% lower than the same time last year (739). At the end of March, 89% (577) of cases were with Members and 11% (71) were awaiting constitution.

Decisions:

In the year to 31 March 2010, the RRT had decided 1602 cases. Of these cases 25% were set aside, 70% were affirmed, 1% was withdrawn and 4% were other reasons. The average time from the receipt of the Department's file to decision in Victoria was 123 calendar days.

Mr Harris asked if the caseload reports were available to the public and if any forward analysis of caseload trends was undertaken. The Principal Member responded that information on our caseload was included in the Tribunals' annual report. He said that forward analysis of caseload trends was provided by DIAC intelligence in identifying trends and spikes in lodgements. He added that China has a huge impact on our caseloads and

reporting analysis ,identified the recent increase in applications from Fiji. He reported that Registry teams in both Victoria and New South Wales are doing increased analysis of cases to identify similar issues and claims and to identify potentially sensitive cases. The Deputy Principal Member added that the Tribunals monitor major events like the World Youth Day and the Homeless World Cup in an attempt to anticipate trends in applications. She advised that the Tribunals are continually monitoring and reviewing its processes to identify enhancement and improvements to our operational areas. Ms O'Brien said that trends in lodgements can vary from state to state and said that DIAC has recently seen an increase in applications from Indian students seeking protection in NSW but this has not been replicated in Victoria. Ms O'Brien also said that trends and spikes in applications can occur following announcements by the Minister of legislative changes.

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

The Principal Member informed the meeting that Principal Member Direction 1/2009, which took effect on 31 July 2009, contains the Tribunals' current caseload and constitution policy and that the Direction is now under review. The Tribunals want to make sure that any input from the community can be considered in developing the caseload and constitution policy for 2010-2011 and the Tribunals have recently circulated an issues paper for consideration with areas of possible change. In formulating this policy, assumptions are based on lodgements during the current year and the aim of complying as far as possible with the relevant statutory time limits.

The Principal Member noted that particular issues for consideration included whether any new categories of case should be given priority, or whether any categories should be removed from the priority list, taking into account the fact that making more types of cases a priority may mean that other cases which are not priority will take longer to be allocated to a Member. In addition he sought feedback on whether the time standards for the constitution of priority cases should be adjusted and whether priority cases for which the Departmental documents are yet to be received should be held back from constitution until those documents are received. The Deputy Principal Member added that it was important for the Tribunals to seek the views of community representatives in developing the policy. Mr Antippa asked whether cases where representatives asked for priority would be given priority by the Tribunals, to which the Principal Member responded that this type of request was accounted for in the last priority type in Principal Member Direction-1/2009, paragraph 7, page 2

relating to special circumstances. Mr Webb suggested that health related issues should be given priority. The Deputy Principal Member responded that a lot of health issues are accounted for under the special circumstances case category in the policy and also under the ‘vulnerable persons’ category. Mr Briton asked how the Tribunals identify ‘vulnerable persons’. The District Registrar stated that all newly lodged cases are looked at by specialised Registry Senior Officers to determine whether priority processing should be granted. She stated that the Senior Members and the Caseload and Constitution Section in Sydney assess cases for priority processing. The Principal Member added that Members also prioritise their cases following allocation of cases to them. Mr. Belmar-Salsas asked if cases requesting priority are appellable if the Tribunals refuse the request. The District Registrar replied that cases that have been refused priority by an authorised officer can be re-considered by her and if she refuses the request by a Senior Member.

The Principal Member mentioned that he would appreciate community representatives’ feedback on the batching of cases which is contained in paragraphs 17-19 of the “Issues Paper”. Ms Ford recommended that batching of cases should be carefully considered as “fast and efficient” may not be the fairest approach. She cited subclass 485 cases and cases affected pre-and post-Berenguel as examples. She thought it was important that Members have a cross section of cases to vary their caseload. The Deputy Principal Member acknowledged Ms Ford’s comments and advised that taking a batch of cases was voluntary and that Members do receive a broad mix of cases.

Ms Hanna asked whether ‘decision ready cases’ should be given priority. The Principal Member said that the difficulty with this concept was that one person’s view of a decision ready case may not equate to a Member’s view of the case. The District Registrar re-iterated that the Tribunals have specialised registry officers who assess each new case following lodgement in order to identify cases for priority processing and to identify sensitive cases.

The Principal Member said that the Tribunals were conscious of the need for equity in the allocations of cases to Members. He said that he meets with the Deputy Principal Member and the Senior Members twice weekly to discuss case constitutions and allocation of cases to individual Members. He stated that he was very interested in receiving feedback from community representatives on the complexity of the case categories contained in paragraphs 20-23 of the “Issues Paper” and whether these case categories should be retained.

The Principal Member also discussed the allocation of cases where the applicant is located outside Melbourne. He said that to maximise the number of face-to-face hearings, the Tribunals are attempting to identify cases where the applicant is located in or near Adelaide and Perth and to allocate those cases to Members in those locations. He advised that in Queensland, the practice has been, where possible, to allocate Brisbane Members cases from applicants residing within 300km from Brisbane in order to maximise the number of face-to-face hearings. Applicants residing outside this radius of Brisbane are likely to have their case heard by video. Mr Webb considered that it was more desirable to have face-to-face hearings.

Ms Ford suggested that the MRT time standards be reviewed. The District Registrar said that the Tribunals are developing a reckoner which will give the public more information about where the Tribunals are up to in terms of caseload. Mr Harris supported this and said if more information were available on time standards, representatives could provide a more realistic expectation to their clients in terms of decision timeframes.

The Deputy Principal Member invited any further written comments be provided to Genevieve Cantwell by Friday 7 May

7. RRT Open Day

Hilary Lovibond, District Registrar, Melbourne said that she wanted to canvass community representative views on the best format for holding the RRT Open Day. She stated that she considered there was some value in broadening the concept and including the work of the MRT in an Open Day. She also asked for views on the timing of the Open Day and whether the Open Day should be held inside or outside Refugee Week. She thought that including the work of the MRT would assist with demystifying some of the MRT's processes. She advised that staged hearings, demonstrations of video conference hearings and general information on the Tribunals decision making processes would be included in the format of the Open Day.

Ms Poljak asked if the RRT kept statistics on the numbers of people attending the Open Day. The District Registrar replied no but stated that we are aware of the anticipated numbers of people attending by the responses to the Tribunal's invitation. She added that students, volunteers, tertiary education providers and community representatives have attended the Open Day in the past. The Deputy Principal Member added that in Sydney a high number of potential applicants attend. Senior Member Murphy said that the Tribunals are trying to broaden the target audience and he would be interested in community representatives' views

on the Tribunals' operational areas to promote and publicise. Ms Ford suggested promoting the Open Day to unrepresented students. There was general consensus by community representatives in favour of a separate MRT open day event and leaving the event scheduled in Refugee Week to focus on the work of the RRT.

8. Structure and timing of community liaison meetings

The Deputy Principal Member invited comments regarding both the structure and timing of future community liaison meetings. Following discussion there was agreement that the frequency of two meetings per year was sufficient and that the time of 2.00pm for the start of the meeting was suitable.

9. Availability of migration agents due to Christmas Island Commitments

The Deputy Principal Member advised that she had placed this item on the agenda in light of the large caseload on Christmas Island and that Tribunal Members were confronting problems with the availability of migration agents and interpreters. As a result of their commitments migration agents were seeking adjournments of hearings and extensions of time to respond to the Tribunals' statutory correspondence. The Deputy Principal Member asked if migration agents and representatives could provide the Tribunal with as much advance notice as possible if they intended to seek extensions of time to provide additional material or in requesting adjournments of hearings due to their commitments on Christmas Island. Mr Webb advised that the Refugee and Immigration Legal Centre predominantly provides all of the migration agents to Christmas island and as a result of this there were flow on effects to Legal Aid , ASRC and other agencies in picking up the slack of other cases. Mr Antippa said that at times it was not feasible to make early requests for adjournments to hearings and requests for extensions of time. The Deputy Principal Member asked community representatives where practicable to provide as much advance notice to the Tribunal as late requests could have significant impacts on the Tribunals' ability to meet statutory time frames.

10. Items raised by community representatives

10.1 Priority processing-decision ready applications and instances where priority will be accorded to an application

This item was raised by Maria Jockel but was held over in her absence.

11. Other Business

Ms Ford reported that the Tribunals' process for lodging FOI requests was working very well and it was much more expeditious than the previous approach.

Ms O'Brien advised that DIAC is looking at re-packaging its country information with a view to developing guidance notes for Protection visa decision makers. She confirmed DIAC's intention to make this material publicly available on their website. She said that country information related to Sri Lanka and Afghanistan will be released first.

Ms Hanna asked about the Tribunals' preferred approach for referring cases for Ministerial Intervention. The Deputy Principal Member said that the Tribunals have the power to refer cases to the Minister under the Tribunal Policy and Procedures Guideline 1/2010. She advised that the Guidelines state that if a Tribunal Member refers a case to DIAC, the Department will assess the person's circumstances under the guidelines and provide a submission to the Minister. She said that migration agents and representatives should advise the Tribunal Member of the applicant's intention to and reasons for seeking ministerial intervention. She suggested that as much detail as possible be given to the Member as the Member can then decide whether to refer the matter and if so include the reasons for the request for Ministerial Intervention in their decision.

12. Date of Next Meeting

The Deputy Principal Member thanked everyone for their attendance and contribution to the meeting and closed the meeting at 4.05.