

NOTES OF ADELAIDE MRT-RRT COMMUNITY LIAISON MEETING

2:00pm 12 May 2010

11th Floor, Hearing Room 4, 91 Grenfell Street, Adelaide

Present: Denis O'Brien – Principal Member, Migration Review Tribunal and Refugee Review Tribunal (MRT-RRT); Amanda MacDonald – Deputy Principal Member, MRT-RRT; Deborah Morgan - Member MRT-RRT; Hilary Lovibond, VIC District Registrar MRT-RRT; Bernie Goodwin - Australian Red Cross; Christopher Boundy - Legal Services Commission of South Australia; Clare Byrt - Administrative Appeals Tribunal; Brian Jones - Migration Institute of Australia; Roger Sallis – SA Bar; Janice Drewery-Clark – Migration Alliance.

Chair: Amanda MacDonald

Notes: Hilary Lovibond

1. Welcome

Deputy Principal Member MacDonald welcomed participants and introduced herself, then invited those present to introduce themselves to the meeting. 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 Dodi Ansell – Amnesty International Australia; Sharon Wachtel – St Vincent de Paul Society; Glenn Rayner, Migration Alliance; Eugenia Tsoulis - Migrant Resource Centre of South Australia; Pat Green - St Vincent de Paul Society; Bernadette McGrath – Survivors of Torture and Trauma Rehabilitation Service; Simon Forrest – SA Multicultural and Ethnic Affairs Commission; Vivienne Hope – Multicultural Communities Council of South Australia.

3. Notes of previous meeting

The notes of the previous meeting of 8 December 2009 were accepted as a true record of the meeting. The Deputy Principal Member noted that there was one piece of business arising from the December meeting, namely e-mail communication with applicants and representatives. At the last meeting it was stated 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. The Tribunals are developing a detailed project plan which will be circulated to the group in the near future. The Deputy Principal Member also noted that as discussed at the previous meeting, the Tribunals would be moving to enable documents requested under s.362A to be provided electronically, either on a CD or by email.

4. Executive report

Principal Member Denis O'Brien highlighted some of the Tribunals' recent key achievements and developments.

Member recruitment

The Principal Member outlined the process to date with regard to Member recruitment, following advertising in the national press on 7 November 2009. Interviews were conducted by the Selection Committee which comprised 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 him, during February and March. The selection exercise is yet to be finalised.

Planning will begin shortly on induction and training arrangements in preparation for possible new Member appointments in July.

Role of the Deputy Principal Member

The Principal Member explained that as Amanda MacDonald had indicated, she has been appointed as the Deputy Principal Member of the MRT and the RRT. 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.

New Web Page for Representatives and authorised recipients

The Principal Member 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.

The Principal Member went on to explain that the new page is an enhancement to the information available on the Tribunals' website and implements one of the recommendations set out in the Tribunals' Stakeholder Engagement Plan 2010-11. The contents of this page will be regularly reviewed and updated. A comprehensive 'Guide for Representatives' is under development and will be published on the Tribunals' website in the near future. Any suggestions or feedback would be gratefully received and can be directed to the A/g Executive Officer in Melbourne, Genevieve Cantwell.

Gender Guidelines

The Principal Member noted that participants may already be aware that since the last Community Liaison meeting, the Tribunals have published Gender Guidelines, the document having been consulted widely. He thanked participants for their valuable comments and contributions made during the process of shaping the policy. The document is now available on the MRT-RRT website.

Stakeholder Engagement Plan 2010-11

The Principal Member informed the meeting that the Tribunals' Stakeholder Engagement Plan for 2010-11, which was discussed at the previous meeting, is now available on the MRT-RRT website. 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 our communication with stakeholders and the information provided about the Tribunals' procedures;
- inform the Tribunals' strategic direction, policy and operations through an improved understanding of stakeholders' perspectives and needs; and
- shape the Tribunals' knowledge, attitudes and behaviours through communication with stakeholders.

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

Amended Principal Member Direction

The Principal Member noted that in November, he 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

The Principal Member noted further that following revisions made by the Minister to his Ministerial guidelines, he had reissued Tribunal guidance on referrals for Ministerial intervention. The revised policy includes 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. 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. The Guidance is publicly available on the Tribunals' website.

In response to a question from Mr Brian Jones, the Deputy Principal Member explained that if an applicant informs the Tribunal at hearing that they are seeking ministerial intervention on the basis of a partner relationship, the Tribunal would suggest the applicant may wish to get further advice from the Department about the new partner visa pathway. The Principal Member clarified further that the Tribunals have been advised by the Ministerial Intervention Unit that applicants referred by the Tribunal or seeking information directly would be advised about the partner visa pathway, and that Members had been made aware of this.

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). Stakeholders are regularly invited to provide input into the types of cases of particular interest to the community. He noted further that 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. In addition, 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. 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 informed the meeting that in December 2009, he signed a Memorandum of Understanding (MOU) with the acting Secretary of the Department of Foreign Affairs and Trade (DFAT) that formalises the information sharing and liaison relationship between the two agencies. He explained that 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 Principal Member noted that 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. 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 held in Melbourne which Adelaide Members also attended 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 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'.
- During February, Tribunals hosted eight delegates from the New Zealand Refugee Status

and Appeals Authority (RSAA). They 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 report and statistics

The Deputy Principal Member introduced the caseload and statistics report, presented by Senior Member Linda Kirk, noting that comments regarding the form and content of the South Australian statistics presented to the group for the first time, would be appreciated.

▪ 5.1 MRT and 5.2 RRT

Senior Member Kirk explained that she would focus on the executive summary as presented in the caseload report distributed at the meeting. Noting that this provides statistics for the 2009 – 2010 financial year (as at 30 April 2010) where the residential state of the review applicant is given as South Australia (SA), she outlined the following:

Lodgements

For the year to 30 April 2010, applications lodged by review applicants residing in SA made up 4% (268) of all MRT lodgements (6,650) and 2% (37) of all RRT lodgements (1,838). The top four MRT SA lodgement case categories are Skilled linked refusal 50 (19%), Partner refusal 47 (18%), Student refusals 34 (13%), and Visitor refusal 31 (12%). The top three RRT SA lodgement by source countries were China (PRC) 10 (27%), Albania 6 (16%) and Egypt 5 (14%).

Active cases

As at 30 April 2010, there were 275 active SA cases, 256 MRT cases, 19 RRT. Of those, 138 cases were with Members - 68 (25%) were with SA-based Members. The majority of the SA cases not with SA members were with Victorian Members. The remaining 137 cases were awaiting constitution.

Decisions

In the year to 30 April 2010, 270 decisions were made on MRT reviews where the residential state of the review applicant was given as SA. The average time from lodgement to decision was 136 calendar days for visa cancellations and 321 calendar days for all other MRT decisions. In the same period, 33 RRT decisions were made on reviews where the residential

state of the review applicant was given as SA. The average time from receipt of the Departmental documents to decision was 147 calendar days.

Hearings

In the year to 30 April 2010, there were 6 video [3 MRT & 3 RRT] and 140 face to face hearings [124 MRT & 16 RRT] held by Members in Adelaide. In addition, there were also 15 hearings [8 MRT & 7 RRT] held by Members in NSW where the applicant or witness was in Adelaide and 186 hearings [158 MRT & 28 RRT] held by Members in Victoria where the applicant or witness was in Adelaide.

In concluding, Senior Member Kirk noted that the South Australian caseload is a relatively small proportion of the Tribunals' caseload nationally, and invited questions. Responding to a question from Mr Brian Jones, Senior Member Kirk and the Deputy Principal Member explained that the 100% clearance achieved in South Australia, while very pleasing and reflecting a good year's work for the MRT, is effectively maintaining a stable on-hand caseload, as the MRT in particular also has a large national backlog. In addition, the Tribunals have started a process of seeking to map applicants' locations to ensure as many hearings as possible are heard face-to-face, for example by allocating to Adelaide Members those applicants close enough to attend a face-to-face hearing. Mr Roger Sallis commended the Tribunals on a well-presented caseload report.

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

The Principal Member explained that Principal Member Direction 1/2009, which took effect on 31 July 2009 and which contains the Tribunals' current caseload and constitution policy, is currently under review. The Tribunals have recently circulated the issues paper outlining areas of possible change in the constitution policy for 2010-11 which was distributed before the meeting, with the goal of informing discussion as part of the review process and seeking Community Liaison Committee members' input. The Principal Member went on to note that with regard to the section in the issues paper on priority categories, the more categories there are, the further "ordinary" cases are pushed back, due to constraints in Member capacity. He also noted that the 34% increase in decisions mentioned earlier could be attributed in large measure to the batching strategies adopted during the year. The Principal Member then invited comments, noting that written comments can be directed to Genevieve Cantwell.

Returning to the issue of state-based allocations, the Deputy Principal Member explained that where possible, consideration is given to the location of the application and the practical options this presents to make the best possible arrangements for hearings, irrespective of state boundaries. Citing the example of a number of applications lodged by clients resident in Griffith, NSW, she noted that the process of mapping applicant locations seeks to maximise the number of matters which can be heard in person and to avoid video hearings wherever possible, but that where a video hearing will be required in any case, the location of the Member is a lesser consideration. In response to a question from Mr Brian Jones, the Deputy Principal Member explained that the location and availability of interpreters may be considered, but that this can be difficult. Sometimes it may be appropriate for the Member to travel, to provide a better hearing experience for the applicant, if this can be afforded by having the Member and the interpreter at the same location as the applicant. She acknowledged that there may be other factors which could usefully be considered in helping the Tribunal decide where to allocate cases.

Mr Brian Jones asked that it be noted that he had been impressed with the handling of interpreters in Adelaide recently, and that the attention given to this issue by the Tribunal is most gratefully received.

7. Structure and timing of community liaison meetings

The Deputy Principal Member invited comments regarding both the structure and timing of future community liaison meetings, either at the meeting or later via email or telephone. Those present indicated that Wednesday afternoons seemed a suitable time.

8. Issues raised by community representatives

There being no issues raised by community representatives, the Deputy Principal Member noted that comments or feedback were welcome at any time and could be provided to her or to the Principal Member.

9. Other Business

- **Decisions resulting in injustice (Mr Brian Jones)**

Mr Jones cited the example of a student whose visa was cancelled for working more than 20 hours per week when undertaking a work placement which was not approved due to oversight by the course co-ordinator, and asked what options the Tribunal had in dealing with such matters. The Deputy Principal Member observed that it may be open to question whether the

student was in breach if the work was undertaken while the course was not in session, but noted more generally that a Member can provide feedback regarding issues of that nature to the Tribunals' Executive and from there it can be fed back to the Department through the regular liaison meetings between the two agencies.

9. Date of next meeting

The Deputy Principal Member thanked all present for their participation. She noted that the next meeting will be held on a Wednesday in November, at the same venue.

**ACTION ARISING FROM ADELAIDE MRT-RRT COMMUNITY LIAISON
MEETING OF 12 MAY 2010**

3. New web page for Representatives and authorised recipients

Action Item: Members of the Community Liaison group will provide any comments or feedback on the Tribunals' *New web page for Representatives* to the Tribunals' A/g Director of Policy and Procedures, Marina Osmo.

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

Action Item: Members of the Community Liaison Group will provide written comments on the *Tribunals' issue paper on constitution policy for 2010-2011* to Genevieve Cantwell, A/g Executive Officer by 4 June 2010.