

# NOTES OF PERTH MRT-RRT COMMUNITY LIAISON MEETING

10.30am 9 December 2009

Level 4, Hearing Room 3, 111 St Georges Terrace, Perth

**Present:** Denis O'Brien – Principal Member, Migration Review Tribunal and Refugee Review Tribunal (MRT-RRT); John Lynch – Registrar, MRT-RRT; Senior Member - Linda Kirk, MRT-RRT; Lisa Ward – Member, MRT-RRT; Tony Caravella – Member, MRT-RRT; Hilary Lovibond – VIC District Registrar, MRT-RRT; Paul Farrell - Department of Immigration and Citizenship; Dominic McKenna - Legal Aid WA; Caroline Wright - Legal Aid WA; Jim Sharp - Amnesty International; Agnes Beaton - Australian Red Cross; Frank Kam Tong Fung - Centrecare Migrant Services; Michelle Hullett - Law Society WA; Peter McKiernan - Commonwealth Ombudsman; Barry Johnson - Administrative Appeals Tribunal; Bill Thomas - Case for Refugees; Fleur Noonan - Metropolitan Migrant Resource Centre; Eloise Higgs - Association for Services to Torture and Trauma Survivors; Nabeel Lang - Centacare Catholic Migrant Services; Michael Underdown - Law Society WA.

**Chair:** Principal Member, Denis O'Brien.

**Notes:** Hilary Lovibond, VIC District Registrar.

## 1. Welcome

Principal Member Denis O'Brien welcomed all present to the meeting and invited participants to introduce themselves. He noted that while previous Community Liaison meetings in Melbourne had sought to involve WA stakeholders by phone or video, this inaugural meeting in Perth 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 and Adelaide.

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 Frank Pelusey - St Vincent de Paul Society; Suresh Rajan - Ethnic Communities' Council of Western Australia; Vanessa Moss - SCALES Community Legal Centre; Rosemary Hudson-Miller - Coalition for Asylum Seekers, Refugees and Detainees.

### **3. Executive Report**

The Principal Member 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. This will include consultations with the community and stakeholders, and a review of the Tribunals' client service charter.

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

#### ***Member appointments and recruitment***

The Principal Member 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.

The Principal Member 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***

The Principal Member 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***

The Principal Member 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***

The Principal Member 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.

### ***Supplementary Budget Estimates***

The Principal Member 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 transcript is available at [www.aph.gov.au](http://www.aph.gov.au).

### ***Publication of a daily list of MRT and RRT hearings***

The Principal Member 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 does not include the names of RRT applicants as RRT hearings are private.

### ***Refugee Week***

The Principal Member 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***

The Principal Member 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.

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

### ***Expert opinion evidence***

The Principal Member 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***

The Principal Member 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.

The Principal Member invited questions in relation to the Executive Report. Mr Bill Thomas asked whether consideration had been given to publishing details of Tribunal hearings in the general court lists. The Registrar responded that providing this information on the website was considered to be most appropriate, but that consideration would be given to making it more widely known that this information was available.

In response to a question from Mr Michael Underdown regarding the sources and nature of expert opinion evidence for Chinese cases, and particularly those involving Uighurs, the Principal Member explained that the Tribunals source country information by way of country research carried out by expert research staff who use all open sources. He noted that this information is now being published on the Tribunals' website and that the information available is currently being updated. From time to time external experts provide information, including country information, to Members. The Registrar noted that Member professional development activities had recently been supplemented by the implementation of background briefings, where community leaders are invited to speak confidentially to Tribunal Members. The Principal Member mentioned that the Uighur leader, Rebiya Kadeer, was among those who had addressed Members during the year. The Registrar mentioned that additional staff, including analysts and more staff at higher levels had recently been recruited to the country advice area.

#### **4. Caseload report and statistics**

##### **▪ 4.1 MRT and 4.2 RRT**

Senior Member Kirk 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 Western Australia. She explained that separate figures would be made available for future meetings.

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

- WA makes up 11% (393) of all MRT lodgements (3,579) and 3% (28) of all RRT lodgements (848).
- The top MRT WA lodgement case categories are 1) Student cancellation 67 (17%); 2) Temporary business refusal 61 (16%); 3) Partner refusal 56 (14%); 4) Student refusals 54 (14%); and Skilled linked refusal 48 (12%).
- The top four RRT WA lodgement by source countries were 1) Zimbabwe: 7 (25%); 2) China (PRC): 5 (18%); 3) Burma (Myanmar): 2 (7%); 4) Fiji: 2 (7%); and 5) Pakistan: 2 (7%).
- As at 3 December 2009, there were 716 active WA cases, 693 MRT cases, 23 RRT.
- 225 cases were with Members - 49 (21%) were with WA Members.

She explained that the majority of the WA cases not with WA members were with Victorian Members and were heard by video, noting that occasionally, where the circumstances of the case demanded it, Melbourne Member might travel to WA to hear a matter in person.

Questions were invited in relation to the caseload and statistics. In response to a question from Mr Dominic McKenna regarding the difference in the overall set aside rates in the NSW and Victorian Registries, the Principal Member explained that this is influenced by the makeup of the countries of origin within the caseload, which differ from Registry to Registry.

The Registrar noted that consistency is an important issue for the Tribunals and is the subject of constant attention, including with respect to the Member Code of Conduct, which requires Members to have regard to this. He explained that the Tribunals strive to produce similar outcomes on similar facts, but that this will be influenced by factors such as differing quality of representation and supporting information.

In response to a query about judicial review outcomes, the Principal Member advised that the Tribunals maintained statistics which were available in the Annual Reports. With reference to this information he explained that since 2006/07, the number of applications for judicial review of RRT decisions had declined overall, as had the number of remittals, indicating a general improvement in the quality of decisions. The Registrar stated that these figures are variable and will be affected by case law, including judgments such as *SAAP*, *SZBEL* and the recent decisions regarding s.91R(3).

Mr William Underdown shared with the meeting some observations regarding the measures used by the New Zealand Refugee Status Review Authority to improve consistency, including publishing 100% of decisions. The Principal Member explained that the Tribunals are currently publishing more than 40% of decisions, and looking to increase this number. He said that consistency is also fostered by a collegiate approach and group discussion, and noted that, while aware of the approaches used in other countries, such as leading decisions, where one case with particular characteristics is dealt with at a high level and other decisions will generally follow this, the MRT-RRT have not done this so far.

In response to Mr Dominic McKenna's question about whether figures were available for Ministerial Intervention referrals, the Registrar stated that figures for the previous year were in the Annual Report. He undertook to get more information on the current year's figures.

Some further discussion took place in regard to the Tribunals' practice in regard to dealing with cases where an affirm decision was inevitable but an indication was given that the applicant would seek Ministerial intervention. The Principal Member noted the Tribunal had limited options where an applicant elects not to attend a hearing, but that otherwise, the Minister had indicated that he wanted the Tribunal to ask questions and obtain information which might be relevant to a Ministerial Intervention request.

The Registrar added that the Tribunals are in the process of obtaining further guidance from the Minister on how such cases should be dealt with. He noted that a representative's submission is important in bringing facts to the Member's attention and that Members will refer cases which they believe warrant intervention by the Minister.

It was noted further that information about rates of representation before the Tribunals was at page 41 of the Annual Report, showing 68% for RRT cases and 46% for MRT cases, with a higher set aside rate for represented cases.

## **5. Draft Stakeholder Engagement Plan**

The Principal Member 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.

He explained that community input is currently being sought and that the plan will be finalised early in the New Year and a mechanism for reporting established.

Meeting participants had no further comments to offer on the plan. The Principal Member said he would welcome any written comments, though these needed to be made soon in view of the imminent finalisation of the plan.

## **6. Providing clients with better access to documents**

The Registrar explained that the Tribunal is considering providing access to documents under s.362A of the Migration Act to applicants electronically. MRT applicants and their representatives could request documents under s.362A of the Act and have them delivered by email or on a CD. On average, the MRT currently receives about 1,500 requests for access to documents annually.

Currently access is provided in hard copy by post or by file inspection. These options would still be available, but should this proposal be implemented, the Tribunal would be able to provide faster and more efficient delivery of documents to our stakeholders.

He added that the Tribunals are in ongoing dialogue with the Department about the provision of documents to applicants at the time a review application is lodged. Participants were invited to submit their views on the proposal by mail, email or by phone.

It was noted that documents can be obtained from DIAC under FOI on CD and Paul Farrell clarified that the Department will provide copies of personal documents to individuals without an FOI request.

## **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.

He advised that the use of mailboxes was 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 would 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.

Various views were put to the meeting, including some in support of the proposal regarding increased use of email, while others expressed some reservations due to the small establishments of many in the industry such that the use of individual mailboxes also posed a problem for the stakeholder organisations. The Registrar noted that the Tribunals are very aware of the potential difficulties of the notification regime and have recently expressed to Government the need for the law to be amended to provide some flexibility around this. Change in this area would be particularly relevant if greater use were to be made of email notification, where messages can unintentionally go to spam folders with adverse consequences for the applicant.

The Principal Member observed that the Tribunals would be proceeding cautiously and that the email facility would most likely be offered on a voluntary basis initially.

## **8. Other Business**

- **Citation of information from primary decisions (Mr Bill Thomas)**

Mr Bill Thomas outlined the circumstances of a case where material included in a DIAC decision about doubt surrounding the identity of an RRT applicant was cited in the Tribunal decision and asked whether this was necessary, given the decision should stand on its own facts and that these issues were now on record as part of the Tribunal's decision and would thus potentially be accessible by others. It was explained that both the Registrar and the Principal Member can direct that a published decision be edited. In addition, representatives were encouraged to alert the Member to issues of this nature at hearing. The Registrar invited Bill Thomas to let the Tribunal have further details of the case he had mentioned so that editing action could be considered.

- **Translation of documents (Mr Dominic McKenna)**

Mr Dominic McKenna asked about the Tribunals' policy with respect to translation of documents. The Principal Member explained that, while applicants are encouraged to provide

translated documents, from time to time the Tribunal may pay for the translation of critical documents.

- **Protection of witnesses (Mr Dominic McKenna)**

Mr Dominic McKenna asked whether there was any scope to provide protection from prosecution for witnesses in relation to evidence given to the Tribunal, citing the circumstances of a recent case. *The Principal Member said that this was something that he would arrange for the Tribunals to have a look at this to see whether the Tribunals should be pushing for an amendment to be made to the Criminal Code.*

- **Acknowledgement of appointment of representative**

Mr Frank Kam Tong Fung questioned whether it was usual practice for the Victorian Registry to acknowledge the receipt of appointment of authorised representative forms. The VIC District Registrar explained that while the Tribunals pay very close attention to this information and record it carefully, a form would not usually be acknowledged. She undertook however to raise this with staff in the Registry and suggested that a covering letter requesting acknowledgement would ensure that a response was sent.

## **9. Date of next meeting**

In closing, The Principal Member 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.

The Principal Member thanked all present for their participation and thanked AAT District Registrar Barry Johnson for his 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 9 DECEMBER 2009**

**4. Caseload report and statistics**

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

*Action taken:* Done.

*Action Item:* The Registrar will provide more information on the 2009-2010 Ministerial intervention referrals figures.

*Action taken:* Done.

**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.

.