

# **NOTES OF PERTH MRT-RRT COMMUNITY LIAISON MEETING**

**10:00 am 4 June 2010**

**Geographe Room, State Library of WA, Perth**

**Present:** Amanda MacDonald – Deputy Principal Member, MRT-RRT; Linda Kirk – Senior Member, MRT-RRT; Tony Caravella - Member MRT-RRT; Hilary Lovibond, A/g Deputy Registrar MRT-RRT; Barry Johnson – District Registrar, AAT-Perth; Suresh Rajan – Ethnic Communities Council; Anna O’Connor - Legal Aid WA; Jeremy Hooper - Migration Alliance;

**Chair:** Amanda MacDonald

**Notes:** Hilary Lovibond

## **1. Welcome**

Deputy Principal Member MacDonald welcomed participants and introduced herself. She explained 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.

The Deputy Principal Member 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 Denis O’Brien – MRT/RRT; Bill Thomas – Case for Refugees; Jim Sharp-Amnesty International; Tony Pietropicollo-Director - Centrecare Migrant Services; Paul Farrell – Associate State Director and Associate Global Manager Temporary Visas, DIAC; Debbie Cole - WA Bar Association; Lisbeth Lord - Australian Red Cross; Minoo Manesh - Association for Services to Torture and Trauma Survivors; Vanessa Moss – SCALES; Stephen Sinclair - State President MIA

## **3. Notes of previous meeting and business arising**

The notes of the previous meeting of 8 December 2009 were accepted as a true record of the meeting.

### 3.1 Number of Ministerial Intervention Referrals for 2009

The Deputy Principal Member noted that as discussed at the November 2009 meeting, figures for Ministerial Intervention referrals for the current financial year to 31 May had been obtained. These showed that for the RRT nationally, 69 applicants had requested the Tribunals refer their case to the Minister, and the Tribunal had referred 86 cases. For the MRT, applicants had requested referral in 221 cases, and 209 had been referred.

### 3.2 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 email 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.

### 3.3 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. 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.

### 3.4 Protection of witnesses

The Deputy Principal Member explained that she had not been at the previous meeting and so was unaware of the circumstances of the case which led to the issue being placed on the agenda. However, she was able to advise the meeting that the *Migration Act*, at ss. 373 and 435, does provide for the protection of persons giving evidence at the MRT and the RRT. This protection is the same as that for Members of the Tribunal and is provided by way of reference to the provisions of the AAT and the High Court in this regard.

The Deputy Principal Member suggested that any matters of concern in this area should be brought to the attention of the Presiding Member or more generally, to the Registrar or the Principal Member.

There were no further items of other business.

#### **4. Executive report**

In introducing the Executive report, the Deputy Principal Member explained that the Principal Member, Denis O'Brien, apologised for not being able to attend the meeting but that he was extremely busy with matters relating to the current Member recruitment round, in relation to which a press release would be sent out today. She informed the meeting that there would be an additional Member resource in Perth and that Member Lisa Ward had been re-appointed.

The Deputy Principal Member explained further that Member positions had been advertised in the national press in November 2009. Interviews were conducted by the Selection Committee (comprising Denis O'Brien, Principal Member MRT-RRT; Ms Felicity Hand, Deputy Secretary of DIAC; Mr John Gibson, a community representative and President of the Refugee Council of Australia; and Ms Annwyn Godwin, Merit Protection Commissioner, Australian Public Service Commission).

#### ***New Web Page for Representatives and authorised recipients***

The Deputy Principal Member stated that the Tribunals have recently 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 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. The Deputy

Principal Member stated that any suggestions or feedback would be gratefully received and can be directed to the Tribunals' A/g Director of Policy and Procedures, Marina Osmo.

### ***Stakeholder Engagement Plan 2010-11***

The Deputy Principal Member informed the meeting that the Tribunals' Stakeholder Engagement Plan for 2010-11 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 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.

The Plan also sets out how we will engage with stakeholders and the engagement activities planned for 2010-11 and beyond. The Deputy Principal Member noted that feedback received from Community Liaison Committee members had been extremely helpful in shaping the plan.

### ***Gender Guidelines***

The Deputy Principal Member noted that since the last Community Liaison meeting, the Tribunals have published Gender Guidelines. Wide consultation was conducted in relation to the Guidelines and the comments and contributions received from the Community during the process of shaping the policy were most helpful. The document is now available on our website.

### ***Amended Principal Member Direction***

In November, the Principal Member 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 Deputy Principal Member stated that 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 advice that:

- it is generally no longer appropriate to refer cases to the Minister if it appears an applicant may be eligible to apply for a partner visa onshore. Members are advised that if it appears a pathway may exist for an applicant to apply for a further visa onshore, the Member may suggest that the applicant 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;
- 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.

This guidance is publicly available on the Tribunals' website.

### ***Publication of Tribunal decisions and country of origin information***

The Deputy Principal Member informed the meeting 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). The Tribunals try to select cases of particular interest for publication, and welcome feedback in relation to the type of decisions which would be of interest. Feedback can be sent using the link from the publications section on the MRT-RRT website.

The Deputy Principal Member noted further that 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. She went on to explain that 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](mailto:Research.Feedback@mrt-rrt.gov.au)

### ***Memorandum of Understanding with DFAT***

The Deputy Principal Member noted that in December 2009, the acting Secretary of the Department of Foreign Affairs and Trade (DFAT) and the Principal Member 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***

The Deputy 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, some of which have included the Western Australian Members are:

- 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 (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;
- 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, the Tribunals hosted eight delegates from the New Zealand Refugee Status and Appeals Authority (RSAA), who made presentations and participated in a panel discussion with Tribunal Members covering areas of mutual interest, including 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. Senior Member Kirk explained that she would focus on the executive summary as presented in the caseload report distributed at the meeting, and that more detailed statistics for the Western Australian caseload were available at pages fourteen to sixteen of the caseload report. 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 Western Australia (WA), she outlined the following:

### **Lodgements:**

For the year to 30 April 2010, applications lodged by review applicants residing in WA made up 11% (764) of all MRT lodgements (6,650) and 2% (41) of all RRT lodgements (1,838). The top four MRT WA lodgement case categories are Student cancellation 134 (18%); Temporary business refusal 116 (15%); Student refusal 91 (12%) and Partner refusal 83 (11%). The top five RRT WA lodgement by source countries were Zimbabwe 9 (22%); China (PRC) 5 (12%) and Burma (Myanmar), Fiji & India – each with 3 cases (7%)

### **Active cases:**

As at 30 April 2010, there were 754 active WA cases, 740 MRT cases, 14 RRT. Of those 250 cases (33%) were with Members, including 57 cases with the 2 Perth-based Members. The remaining 504 cases (67%) were awaiting constitution.

**Decisions:**

In the year to 30 April 2010, 610 decisions were made on MRT reviews where the residential state of the review applicant was given as WA. The average time from lodgement to decision was 118 calendar days for visa cancellations and 301 calendar days for all other MRT decisions. In the same period, 63 RRT decisions were made on reviews where the residential state of the review applicant was given as WA. The average from receipt of the Departmental documents to decision was 116 calendar days.

**Hearings:**

Noting that when allocating cases, the Tribunals attempt to maximise the number of matters that can be heard face to face by checking the applicant's location, Senior Member Kirk said that in the year to 30 April 2010, there were 8 video [7 MRT & 1 RRT] and 163 face to face hearings [137 MRT & 26 RRT] held by Members in Perth. In addition, 33 hearings [24 MRT & 9 RRT] were held by Members in NSW where the applicant or witness was in Perth; and, 387 hearings [358 MRT & 29 RRT] were held by Members in Victoria where the applicant or witness was in Perth.

Responding to questions regarding the caseload report, Senior Member Kirk explained that the RRT figures do not include the Christmas Island caseload, which does not come to the Tribunal. She noted also that the student caseload is increasing, both for cancellations and refusals.

In response to a question from Mr Barry Johnson, the Deputy Principal Member explained that the MRT's backlog is increasing, as although the number of decisions made has increased by 34%, high lodgement numbers have meant the backlog has continued to grow. With regard to the timeliness of decisions, figures for which are contained in the caseload report, the RRT has achieved the statutory 90 day timeframe in 68 percent of cases for the financial year to 30 April, while approximately 20 percent of those cases not completed within 90 days were delayed for reasons associated with ensuring procedural fairness.

Replying to further questions regarding the likely impact of new Member appointments, the Deputy Principal Member said that overall, Member resources would be maintained at around the same level, although it is to be expected that new appointees will take some time to become fully operational.

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

The Deputy 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. The Direction is now under review. The Tribunals want to make sure that any input from the community can be considered in formulating the constitution policy for 2010-2011 and have recently circulated an issues paper for your 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 Deputy 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 that fact that making more types of case a priority may mean that other cases which are not priority will take longer to be allocated to a Member. Another area of focus is the allocation of cases to Members in Perth, Brisbane and Adelaide, where as outlined previously, the Tribunals attempt to ensure as many cases as possible can be dealt with face-to-face.

The Deputy Principal Member invited written comments to Genevieve Cantwell by Friday 11 June, and asked whether there were any comments or questions from those present.

Mr Suresh Rajan raised the issue of the way in which cases involving Indian students had been handled, noting that he had dealt recently with five such cases where the applicant had been refused by the Department and then was unsuccessful at the Tribunal, and in which there were serious threats of suicide. He noted that these cases raised a number of issues including the stress under which these students were placed, relating particularly to the potential loss of face if they had to return home without having attained the qualification they had sought, and that this was an issue of increasing concern in Australia, although no figures were available on suicide by ethnic origin. The Deputy Principal Member explained that if such cases came to the Tribunal's attention they would be treated as priority. The A/g Deputy Registrar outlined that arrangements were made as required with the Department to ensure effective communication about cases involving issues of this nature and to ensure that appropriate support was available to applicants throughout the process. This may involve

alerting the Department to an imminent decision, identifying and contacting support persons to be available when a decision is notified or taking steps to ensure applicants are in contact with relevant mental health or other support services, where they have accessed these already. Mr Rajan noted these measures and said that he had also been working with DIAC to establish a mentoring program for Indian students which he hoped would assist with a range of issues, including communicating decisions, although some constraints around privacy needed to be overcome. Mr Rajan agreed to provide further information about the proposed mentoring program to the Tribunals.

### **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. She noted that in planning for this meeting, the Tribunals had been conscious of it being the day before a long weekend, and because of that had considered the Friday afternoon likely to be less convenient. It was noted that court appearances are more likely to be in the morning, so that afternoons might be more convenient for most people in future. The Tribunals will seek to organise the next meeting in the afternoon.

### **8. Migration Review Tribunal and Refugee Review Tribunal Service Charter review**

The Deputy Principal Member asked the A/g Deputy Registrar, Hilary Lovibond, to discuss the Service Charter review. The A/g Deputy Registrar explained that the Tribunal is reviewing its service charter, which has been in effect since February 2007, to ensure that it is relevant and useful to clients and stakeholders. She explained that government policy required all Commonwealth agencies that provide services directly to the public to have a service charter, and that the charter is important as a public statement of the Tribunals' commitment to providing a professional and courteous service. The charter sets out what applicants can expect from the tribunals in terms of service and service standards, and also identifies what the Tribunals ask of applicants to ensure they can provide the best possible service. The Tribunals will be writing to all Community Liaison Committee members shortly by email to invite comments on the Service Charter via a fillable form which can be completed and submitted electronically. The A/g Deputy Registrar invited comments on the Service Charter either at the meeting or when the form is distributed.

## 9. Other Business

- **Public comments made by former Member Peter Katsambanis (Mr Suresh Rajan)**

Mr Rajan explained that he had been concerned about the comments made recently about the RRT by Peter Katsambanis which had received a fair amount of air time in Perth, but that he had not seen any comment in response by the Principal Member. The Deputy Principal Member stated that these comments had been addressed at some length during the Tribunals' recent appearance at Senate Estimates, where the Minister, the Secretary and the Principal Member had all refuted Mr Katsambanis' claims. In addition, the Minister had put out a press release in relation to this matter, the Secretary had sent a letter to the Herald Sun and the Principal Member had sent responses to Andrew Bolt and Derryn Hinch regarding comments appearing on each of their blogs. She suggested that a link could be provided to the relevant Hansard and copies of or links to the Minister's press release and the Secretary's letter will also be provided.

The Deputy Principal Member noted further that as the Principal Member had explained during the Senate Estimates hearing, set-aside rates will vary from time to time depending on the caseload, as source countries and circumstances changed, and that at 24 percent they were currently slightly higher this year than last year but significantly lower than they had been in 2004-05 at 33 percent. With regard to the Member recruitment process, the Minister established the current transparent and independent process which involved a delegate of the Secretary, the Principal Member, a community representative and a representative of the Public Service Commission.

*Action Item: Links to the Hansard transcript of the Tribunals' appearance at Senate Estimates on 26 May, the Minister's press release and the Secretary's letter to the Herald Sun to be made available to meeting participants.*

- **Links between area of study and nominated occupation for skilled visas (Mr Jeremy Hooper)**

Mr Hooper explained that as a migration agent he had a particular interest in this area and noted that it appears recently that the Tribunal has supported the view of the Department in cases such as that where it has been found that a business diploma is not compatible with a cooking degree, or a science degree with a business diploma. He stated that he wished to

urge the MRT to consider carefully issues of business innovation and the potential for such combinations to be beneficial, rather than looking only at ASCO definitions.

In response, the Deputy Principal Member explained that Members would be expected to consider each case on its merits and not to look only at the ASCO definitions. She noted that while she can see that there may be some inconsistency in decision making in this area, the Tribunal does strive to be as consistent as possible in determining cases with similar facts, and that in this area the case may turn on what is covered in the courses involved. However, she acknowledged that there may be room to improve the guidance available for decision makers in relation to this and undertook to look at the Tribunal's current legal commentary. The Deputy Principal Member suggested that representatives may wish to provide a submission in relation to a particular case pointing out previous decisions, although members would not be bound by these, and to bring any finalised cases which might be of concern to the attention of the Principal Member.

*Action Item: The Tribunals will review the guidance material in relation to area of study and nominated occupation for skilled visas.*

#### **10. Date of next meeting**

The Deputy Principal Member thanked all present for their participation. Member Tony Caravella asked whether the venue was suitable for participants, and it was agreed that it was central and convenient. The next meeting will be held in November on a date to be advised.