



Australian Government

Migration Review Tribunal · Refugee Review Tribunal

**MINUTES OF THE NEW SOUTH WALES COMMUNITY LIASION COMMITTEE
MEETING**

2:00pm 4 November 2011

Training Room, Level 11, 83 Clarence St Sydney

Attendee	Organisation
Ms Amanda MacDonald (Chair)	Deputy Principal Member, MRT-RRT
Mr Juhan Lubek (Minute-taker)	Executive Officer, MRT-RRT
Mr Denis O'Brien	Principal Member, MRT-RRT
Ms Geraldine Macklin	NSW District Registrar, MRT-RRT
Mr Giles Short	Senior Member, MRT-RRT
Mr John Cipolla	Senior Member, MRT-RRT
Ms Kira Raif	Senior Member, MRT-RRT
Mr Richard Corey	Acting Manager, MRT-RRT Information Services
Father Aloysius Mowe	Jesuit Refugee Services
Ms Andrea Christie-David	Immigration Advice and Rights Centre
Ms Christine Sykes	The Office of the Migration Agents Registration Authority
Ms Cvetanka Jankulovska	Legal Aid Commission of NSW
Ms Emily Hamilton	Amnesty International Australia
Mr Farid Ahmed	Ethnic Communities Council NSW
Ms Heather Sare	NSW Bar Association
Mr Jim Callow	Department of Immigration and Citizenship
Ms Lucy Morgan	Refugee Council of Australia
Ms Mariam Nekoodast	Amnesty International Australia
Mr Rohan Anderson	Commonwealth Ombudsman's Office
Mr Wayne Parcell	Migration Institute of Australia
Sister Aileen Crowe	Catholic Religious Australia

1. Welcome

Amanda MacDonald welcomed participants and thanked them for attending. Ms MacDonald acknowledged the traditional owners of the land. Introductions were made around the table for the benefit of new participants.

2. Apologies

Amanda MacDonald noted the following apologies:

Apology	Organisation
Dr Graham Thom	Amnesty International Australia
Ms Prabha Gulati	Asylum Seekers Centre
Mr Kerry Murphy	Australian Lawyers for Human Rights
Ms Catherine Dobbin	Department of Foreign Affairs and Trade
Ms Jane Brock	Immigrant Women’s Speakout Association
Dr Elizabeth Biok	International Commission of Jurists
Professor Mary Crock	Law Council of Australia
Mr Christopher Levingston	Migration Alliance
Mr Paul Power	Refugee Council of Australia
Ms Susan Vogels	SydWest Migration Services Inc
Mr David Bitel	International Commission of Jurists

3. Minutes of previous meeting and business arising

The notes from the 8 April 2011 meeting were accepted as true and correct.

Amanda MacDonald reported on follow up items from the previous meeting. The Management Board had considered the issue of including an estimation of the duration of the hearing in the hearing invitation letter. The Management Board decided that there were already adequate options for obtaining this information from daily hearing details published on the tribunals’ home page or from making a direct enquiry.

Amanda MacDonald provided an update on the fillable application forms (M1 and R1). The forms are currently being redesigned and testing is being undertaken. It is anticipated that these forms will be available early next year.

Regarding the issue of taking evidence from people affected with significant mental health issues, Amanda MacDonald advised that the tribunals are reviewing the Guideline on

Vulnerable Persons to ensure it covers this issue. She advised that the tribunals had engaged Dr Meg Smith, a community psychologist with an extensive history of involvement in health advocacy. She is currently president of the NSW Association for Mental Health, a part-time community member of the Mental Health Review and Guardianship NSW. She has been a consumer representative on a number of government working and programs in the areas of mental health, disability, suicide prevention and awareness.

Cvetanka Jankulovska advised that the Commission had particular concerns with the processing of family violence cases. Amanda MacDonald confirmed that these cases had distinctive features and noted that the tribunals had engaged Dr Smith to run workshops following the review of the Guideline on Vulnerable Persons.

Amanda MacDonald referred to the discussion on service standards for fee waivers from the last meeting and noted that the Tribunal had issued updated guidelines. She invited Geraldine Macklin to provide an update on recent developments. Geraldine Macklin advised that new guidelines have been issued to staff. Tribunal Guideline 4/2011 (Waiver of Review Application Fees) was issued on 10 June and included the request processing target time frame of finalising 70% of requests within 10 days of receipt. [Migration Regulation change on 1 July changed the 'waiver' to a 'reduction']. Tribunal Guideline of 5/2011 (Reduction of Review Application Fees) was issued on 1 July this year. It provided guidance on the processing of fee reduction requests. The backlog of requests has been significantly reduced with now only 10 applications outstanding. These applications involve other jurisdiction issues or are waiting additional information. The processing timeframes are being met.

Farid Ahmed asked who could apply for the application fee reduction. Amanda MacDonald advised that this option was open to MRT applicants who could demonstrate financial hardship. Tribunal Guideline 5/2011 provided guidelines on processing these applications and the link to this document would be included in the next information update.

Cvetanka Jankulovska advised that the Commission did not have an issue with the guidelines, but did have concerns with how they were being implemented. She made reference to a specific case where the application had been made, but no response had been received.

4. Tribunals' report

Denis O'Brien thanked committee members for attending, and provided an update on new initiatives and developments at the tribunals since the last meeting in April.

Member recruitment

Denis O'Brien updated the committee on the tribunals' recent recruitment round to appoint new members. Additional members were needed to due to additional workloads, and temporary moves of members to the Independent Protection Assessment Office. As a result of the selection exercise the tribunals appointed 23 new members from 1 July 2011, comprising one senior member, 10 full-time members and 12 part-time members. In addition four full-time members were promoted to senior members. The new membership has increased the tribunals' capacity across the country, particularly in the smaller Brisbane and Adelaide offices. In Sydney the appointments had resulted in a member complement of a Principal Member, a Deputy Principal Member, four Senior Members, 16 full time members and 31 part time members. In Brisbane a Senior Member had been appointed and one full time staff member recruited. The tribunals had relocated from the premises of the Administrative Appeals Tribunal to their own offices in Brisbane due to the growth in member numbers. Hearing facilities and registry support services continue to be provided by the Administrative Review Tribunal at their premises.

New member induction

Denis O'Brien informed the committee about the induction program for new members. The program has assisted new members to understand their role as a member of the tribunals, including the expectations and requirements for performance.

The first four days of induction in July focussed on providing the members with an overview of the tribunals and an introduction to migration law and MRT visas, focusing on student refusals and partner cases. New members reported a high satisfaction with the induction programme. A further four days of induction training was delivered in October to provide an introduction to the RRT and protection visa refusals. New members have now taken on both MRT and RRT cases. Their caseload will gradually increase in volume and complexity with support from their mentors, senior members and the tribunals' ongoing professional development program.

Members' professional development

Denis O'Brien advised that the Complementary Protection Bill was passed on 19 September and was assented to on 14 October. It is expected to commence in late March or early April 2012 and will apply to all cases not finally determined at the time of commencement.

Professor Jane McAdam is preparing a training manual for the tribunals and she will be providing training in Sydney and Melbourne in February.

Amanda MacDonald will continue to update the committee on member professional development through the monthly Community Liaison updates.

Fee changes

Denis O'Brien informed the committee about changes introduced through the 2011-12 Budget to MRT and RRT application fees. The fees increased by 10% from 1 July 2011, from \$1,400 to \$1,540. Under the new arrangements, 50% of the MRT application fee rather than the full application fee is refunded if the MRT sets aside, varies or remits the primary decision. A reduced fee of 50% is payable for MRT applicants in severe financial hardship, rather than a full waiver. There is no change to the process for paying RRT post-decision fees under the new fee structure. A motion was before the Senate to disallow the legislation package, but it was not passed.

Mr O'Brien advised the increase in fees was necessary to offset increased costs faced by the tribunals. The MRT application fee had not increased since the MRT was established in 1999 and the RRT application fee had not increased since 2003. The tribunals' caseload has increased substantially and the organisation has been incurring operating losses. The increase in fees will offset losses this financial year and in forward years. Mr O'Brien emphasised the tribunals need to be sustainable and have sufficient resources to meet the commitment to make just, economical and timely decisions.

Caseload and Constitution Policy

Denis O'Brien reported that the 2011-12 Principal Member Direction on Caseload and Constitution sets an objective for the tribunals to finalise at least 11,500 cases in 2011-12. This target is 25% higher than the finalisations achieved in 2010-11 and represents the tribunals' commitment to slowing the growth of cases on hand. Based on last year's output and increased member numbers, this is considered an achievable target. However it is subject to the number of members being appointed to the IPAO, which is having an effect on productivity.

Historically the tribunals' decision making increases towards the end of the financial year so current monthly finalisations can be expected to rise.

Annual report

Denis O'Brien informed the committee that the tribunals' 2010-11 annual report was tabled in Parliament on 14 October. The report highlights significant issues and factors influencing the tribunals' performance during the 2010-11 financial year, and the outlook for 2011-12. Mr O'Brien recommended committee members read the annual report if they have the opportunity and suggested they may be interested in the summaries of notable judicial decisions which have impacted the tribunals' decision making or procedures. A link to the annual report was included in the October Community Liaison update and hard copies were also available at the meeting.

Interpreters' handbook

Denis O'Brien advised that the tribunals had recently revised its interpreters' handbook. The handbook is produced for interpreters and sets out the tribunals' requirements for interpreting at hearings, the procedural aspects of the hearing, the role and responsibilities of interpreters, and information about the specialised nature of the tribunals' work. The new handbook is available on the tribunals' website and a link will be included in the next Community Liaison update.

Events at the tribunals

Denis O'Brien updated the committee on significant events held at the tribunals since the last meeting in April:

- During Refugee Week in June the Refugee Review Tribunal held open days in Melbourne and Sydney. The tribunal members and staff gave short presentations and conducted a mock RRT hearing to give participants an insight into the work of the tribunal and how hearings are conducted. There was a good attendance to see the mock hearing.
- In July Ian McConville the High Commissioner to Nigeria visited the tribunals. Mr McConville spoke to tribunal members and country advice staff about issues affecting the region, and also his experiences from Pakistan, where he worked previously.

Denis O'Brien invited questions from those present on matters covered in his report.

Farid Ahmed asked how the tribunals were funded. Denis O'Brien advised that it was through a budget allocation, and not through application fees.

Mariam Nekoodast asked if the document Jane McAdam is preparing on Complementary Protection would be made available. Amanda MacDonald confirmed that this would become a public document.

5. Caseloads and statistics

The MRT and RRT caseload report as at 31 October 2011 was distributed prior to the meeting.

5.1 Migration Review Tribunal

John Cipolla provided a summary of the NSW MRT caseload. While national lodgements compared to the same period last year increased, NSW lodgements had decreased by 13%. The top five lodgement case categories were: student refusal; partner refusal; family refusal; visitor Refusal; and student cancellation. Student refusals lodgements decreased by 53%, while student cancellations increased by 54%. On a positive note NSW MRT decisions were up 22% up on the same period last year. The active caseload was still increasing. Nationally it was up 46% on the same period last year. The primary decision set aside rate was 36% nationally.

5.2 Refugee Review Tribunal

Giles Short provided a summary of the NSW RRT caseload. While national lodgements compared to the same period last year increased, NSW lodgements had decreased by 20%. The top five lodgement countries were: PRC; Fiji; Malaysia; India; and Lebanon. Cases from both Malaysia and Fiji were down significantly. RRT NSW decisions were 2% up on the same period last year. The RRT clearance rate at the end of October was 98%. The active caseload was still increasing. Nationally it was up 47% on the same period last year. With new members having recently completed RRT induction, capacity was increasing. The number of cases finalised within 90 days of receipt of DIAC file was down to 52% - it was 76% at the same period last year. The average days to process RRT cases was 119 days. These figures were significantly affected by member transfers to the IPAO. The primary decision set aside rate was 26% nationally. The set aside rate for Egypt had increased from 36% to 58%.

Denis O'Brien circulated a table comparing MRT and RRT lodgements for the years 2008-9 to 2010-11. All three years had seen substantial increases, with the increase particularly steep for both the MRT and RRT from 2009-10 to 2010-11.

Sister Aileen Crowe asked how set aside rates were reported. Giles Short advised that for the RRT it was by country of reference and for the MRT by visa category. These figures were detailed in the Caseload Report. There were particular reasons for the differences between countries and visa classes.

6. Practitioner issues

6.1 Update on fillable form

This item was covered under item 3 of the agenda.

7. Other business

7.1 Publication of tribunal decisions

Amanda MacDonald introduced Richard Corey, acting Manager, Information Services. She commented that the purpose of this paper was to seek feedback on the number and sample of decisions published.

Richard Corey introduced matters highlighted in the issues paper circulated with the agenda regarding the publication of tribunal decisions. The tribunals commit to publish at least 40% of decisions to ensure the openness and accountability of decision-making. Mr Corey discussed how published decisions are selected, the removal of identifying information and the challenges around publishing decisions. Mr Corey invited the committee to provide feedback on the publication of decisions.

Farid Ahmed asked why the tribunals only had a target of publishing 40% of issues and how decisions were selected for publication. Amanda MacDonald advised that the number of decisions published was primarily a resource issue. The decisions selected for publication were designed to mirror the caseload with higher percentages from the top source countries for the RRT and the visa subclasses for the MRT. The tribunals were interested to hear what the community considered to be useful.

Cvetanka Jankulovska advised that the style of the published decisions was good and asked how the decisions for publication were selected. Amanda MacDonald advised that the selection was undertaken by the Publications Unit from cases on the decision database. Ms Jankulovska suggested that more decisions from small African countries could be published. Amanda MacDonald advised that this would be looked at, although there were challenges with publishing decisions from small countries. Ms Jankulovska also enquired as to why 68% of Permanent Business visa decisions were published. Richard Corey agreed to follow up this enquiry.

Christine Sykes from OMARA asked why the name of the registered migration agent was not published in case reports. Amanda MacDonald advised that one of the reasons is that there can be a number of agents who have dealt with a case. Members have the option to include this information. Denis O'Brien advised that it was primarily a practical consideration. Sister Aileen Crowe asked if there were alternative methods available to obtain copies of RRT decisions that had not been published. Denis O'Brien advised that only published decisions were available.

Wayne Parcell asked if it had it been a practical decision not to publish agent names in decisions. Amanda MacDonald confirmed that often there was more than one agent, and the question then was which one to list. There was the additional issue of the practical value in listing the name. Wayne Parcell enquired as to whether there was high number of changes. He also suggested that the listing of the names would be public recognition for the agents, and that readers would be able to see which agents were representing applicants. Giles Short advised that a decision was made some time ago not to formally list agents in the decision. Some members did however list agent's names in the body of the text.

Rohan Anderson asked how confident were the tribunals that the published decisions provided a true trend of the tribunals work. Denis O'Brien advised that the published decisions reflected only very general trends, as the publication guide was an internal guide only of what constituted 'of particular interest'. Amanda MacDonald advised that the Melbourne community liaison meeting recommended publishing cases where major legislative change was reflected. Given the tribunals had a significant backlog, this was not always possible.

Cvetanka Jankulovska asked if there would be any merit in splitting the tribunals to increase output. The backlog was a concern. With the increase in the age of cases, witnesses forget

detail as memory fails. Denis O'Brien acknowledged the growth in the age of cases and the increase in the volume of the backlog. The question of how to progress these cases was a significant issue. He advised that the Management Board has scheduled a strategic planning day in December with this issue a major item on the agenda.

Amanda MacDonald invited the committee to email through any further suggestions on publication issues by the end of November.

7.2 Publication of *Précis*

Richard Corey introduced matters highlighted in the issues paper circulated with the agenda regarding the publication of *Précis*. The tribunals produce a monthly bulletin called *Précis*, which provides a wider perspective on the factors that influence the tribunals' decisions and processes. *Précis* contains summaries of recently published MRT and RRT decisions; descriptions of country advice (or research responses prepared in a 'question and answer' format to requests for specific information from members); a selection of recent Federal Magistrates, Federal and High Court judgements relating to MRT-RRT decisions; recent legislation updates; overview of the MRT and RRT caseloads for the preceding month; and percentage of decisions published in the financial or calendar year to date.

Lucy Morgan advised that she found it very useful with a good spread of information. The section on legislation was particularly useful. Sister Aileen Crowe advised that the country information was useful.

Amanda MacDonald invited the committee to email through any further suggestions concerning *Précis* by the end of November.

7.3 2012 meeting calendar

Amanda MacDonald invited the committee to comment on the 2012 meeting schedule circulated with the agenda. The schedule was agreed by the committee.

8. Date of next meeting

The next meeting will be held on Friday 20 April 2012 from 2:00pm in the same location. Amanda MacDonald thanked everyone for their attendance and contribution, and closed the meeting at 3:20pm.