

QUESTION TAKEN ON NOTICE

ADDITIONAL BUDGET ESTIMATES HEARING: 13 February 2006

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

(114) Output: Migration Review Tribunal

Senator Bartlett (L&C 97) asked:

Provide a copy of the memorandum of understanding between DIMA and the Tribunals.

Answer:

Attached is a copy of the Memorandum of Understanding between the Department of Immigration and Multicultural Affairs and the Migration Review Tribunal and the Refugee Review Tribunal signed on 25 November 2005.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AND
INDIGENOUS AFFAIRS
AND
THE MIGRATION REVIEW TRIBUNAL
AND
THE REFUGEE REVIEW TRIBUNAL

1. Purpose

1.1 Recognising the independence and role of the Migration Review Tribunal (MRT) and the Refugee Review Tribunal (RRT) (the Tribunals) to provide independent merits review of migration (non-Humanitarian and Humanitarian) decisions made by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA);

1.2 Recognising that independent merits review by the Tribunals is crucial to DIMIA's delivery of the annual Migration (non-Humanitarian and Humanitarian) Programs;

1.3 Recognising that the Tribunals are required to provide mechanisms of review that are fair, just, economical, informal and quick;

1.4 Recognising the importance of open communication and discussion between DIMIA and the Tribunals (the Agencies) on matters of mutual interest and significance, and the utility of the advice each can provide the other on issues pertaining to their respective decision making;

1.5 Recognising the Government's commitment to the continued identification and pursuit of administrative efficiency measures in the operations of the Agencies;

1.6 Recognising the Agencies' commitment to act in accordance with whole-of-government principles including integrated service and program delivery and integration; and

1.7 Recognising the Agencies' commitment to enhancing the Agencies' corporate governance to secure improved performance and accountability;

the Agencies have agreed to enter into this Memorandum of Understanding (MOU) to provide a framework that facilitates the Agencies' legislative obligations towards each other and effective operational liaison.

2. This MOU

2.1 This MOU records the agreement between the Secretary of DIMIA and the Principal Member of the Tribunals in respect of:

- Liaison arrangements between the Agencies;
- Information exchange arrangements between the Agencies; and
- Financial and business continuity arrangements between the Agencies.

2.2 This MOU is not intended to create binding obligations on the parties and each party has the right to vary its terms at any time by agreement following consultation with the other parties. Changes or amendments to this MOU shall be given effect by an exchange of letters between the Agencies.

Commencement and term of this MOU

2.3 This MOU will come into effect on the date on which it is signed by the persons indicated in clause 2.1, and shall expire 2 years from that date. Prior to the expiration of this MOU, it may be renewed for a further period upon agreement of the parties.

Disputes/conflict resolution

2.4 The Agencies shall attempt to settle by negotiation any dispute in relation to this MOU. The agreed negotiation shall include, where the resolution of disputes at the workplace level have been unsuccessful, the referral of the dispute to the First Assistant Secretary, Ministerial, Corporate Support & Assurance Division (DIMIA), and the Registrar.

2.4 In the event that these officials are unable to resolve the dispute within 21 days, they shall refer the matter to the Secretary and the Principal Member.

Review of this MOU

2.5 On the first anniversary of the signing of this MOU, representatives of the Agencies will review and consider whether amendment of this MOU is appropriate.

3. Liaison

National liaison

3.1 Meetings shall be held at least every six months between senior representatives of the Agencies to discuss matters of common interest and to provide for formal interaction at an Executive level between the Agencies.

3.2 These meetings shall provide a forum for senior representatives of the Agencies, including Output/Program Managers, to exchange information on any issues, activities or developments in the Agencies' caseloads or areas of portfolio responsibility that are relevant to each others' operations.

Other liaison

3.3 The relevant DIMIA State Managers and the Tribunals' District Registrars shall convene quarterly meetings to provide a forum for the exchange of information on any issues, activities or developments in their caseloads or operations that are relevant to the other Agency. They shall also establish and maintain communication and operational arrangements.

3.4 An important focus of liaison will be the discussion and management of cases involving persons in immigration detention, and the discussion and management of cases remitted to the Tribunals by the courts, especially the Federal Magistrates Court and Federal Court. The Agencies agree that the handling of these matters is to be expedited and facilitated as far as possible. DIMIA shall provide information to the Tribunals in relation to the release or detention, or movement between detention centres, of persons who have cases before the Tribunals. There shall be bi-monthly consultation between the Registrar and the Assistant Secretary, Litigation and Legal Services, in relation to matters remitted by the courts.

3.5 The Agencies shall provide each other with opportunities to deliver information sessions to their respective establishments on matters of mutual interest and significance.

3.6 The Agencies shall endeavour to assist each other in increasing the quality and efficacy of decision making and decision making processes.

Consultation on legislative, policy and operational issues

3.7 DIMIA shall consult with the Tribunals in relation to proposed legislative or policy changes or initiatives that will impact on the Tribunals' structures or operations.

3.8 The Tribunals shall consult with DIMIA in respect of policy and operational proposals and issues that the Tribunals submit for Ministerial consideration.

Liaison contact responsibilities

3.9 Primary responsibility for liaison between the Agencies is with the Director, Review Taskforce Section, and the Registrar. Responsibility for liaison with the MRT is with the Director, Special Residence Section, and the Registrar. Responsibility for strategic liaison with the RRT is with the Director, Protection Policy Section, and the Registrar. This does not however prevent direct contact, where necessary or appropriate, between the Tribunals' officers and DIMIA's officers named at **Appendix 1**.

3.10 The Contact List at **Appendix 1** will be updated on a monthly basis by the Director, Review Taskforce Section, and the Registrar and distributed electronically to Tribunal and DIMIA officers named therein. References in the MOU to any Section within DIMIA mean a functional area within DIMIA. References in the MOU to any Section or Team within the Tribunals mean a functional area within the Tribunals. In the event of any change or reorganisation of functions or functional

areas during the life of this MOU, the provisions of the relevant clauses within this MOU will become the responsibility of the functional area deemed most appropriate by DIMIA or the Tribunals.

Local liaison

3.11 Primary responsibility for liaison at the local level in relation to the MRT in NSW is with the DIMIA NSW Manager, Business and Residence or Client Service and Citizenship and the MRT/RRT NSW District Registrar. Primary responsibility for liaison at the local level in relation to the MRT in Victoria is with the DIMIA Victorian Manager, Visa Services and Citizenship and the MRT/RRT Victorian District Registrar.

3.12 Primary responsibility for liaison at the local level in relation to the RRT in NSW is with the DIMIA NSW Manager, Onshore Protection Section and the RRT/MRT NSW District Registrar. Primary responsibility for liaison at the local level in relation to the RRT in Victoria is with the DIMIA Victorian Manager, Onshore Protection Section and the MRT/RRT Victorian District Registrar.

Community liaison

3.13 DIMIA regularly consults with Non-Government Organisations (NGOs) on refugee and humanitarian issues.

3.14 The Tribunals host consultative meetings for information distribution and discussion in relation to the Tribunals' processes, caseloads and relevant legislative and other developments. Representatives of key NGOs and government departments with an interest or involvement in issues related to the review process, including DIMIA, participate in the Tribunals' consultative meetings.

3.15 The Agencies invite each other to their major consultative meetings and understand that they will forward to the appropriate primary contacts listed in clause 3.9 any significant feedback from NGOs gathered at those meetings that relates to the operations or portfolio areas of responsibility of the other Agency.

3.16 The Agencies also attend various consultative meetings hosted by NGOs and understand they are responsible for gathering feedback in relation to their respective operations from those meetings.

4. Legislative obligations, powers and duties regarding information exchange

General

4.1 The key statutory obligations of the Agencies in respect of each other are set out at **Appendix 2**.

4.2 Various provisions of the *Migration Act 1958* (the Act) require or enable the Agencies to give each other information. The Agencies understand that they shall furnish information to each other in accordance with these legislative requirements in

a manner that protects the confidentiality of the information and maximises the efficiency of the Agencies' operations.

4.3 Provision of information and exchange of data should be facilitated by electronic means wherever possible and the Agencies commit to a continuing process of business improvement to more effectively use information technologies in accordance with principles set out in the Management Advisory Committee's report No. 2¹, *Australian Government use of information and communication technology*, other guidelines and any Strategic Plans of the Agencies.

4.4 DIMIA agrees to provide the Tribunals with caseload flow information and other information or developments that have implications for the Tribunals' caseloads.

Case information

4.5 The efficient and timely movement of files between the Agencies is recognised as an important element of operational efficacy. DIMIA may seek to have DIMIA files and documents returned to DIMIA during the course of a review to enable the processing of bridging visa applications or other matters. The Agencies shall co-operate on the timely supply and movement of case files.

4.6 It is recognised that local administrative arrangements in relation to case files have been or will be agreed from time to time between Central Office, the local State/Territory DIMIA offices and the Tribunals' Registries. This MOU enables such local agreements to exist and be developed.

4.7 In respect of applications for review made to the Tribunals, DIMIA is required to provide the Tribunals with all information in DIMIA's possession that is considered by the Secretary to be relevant to the particular review (subsections 352(4) and 418(3), subject to sections 375, 375A, 376, 437 and 438 of the Act). This may include case files and information stored electronically.

4.8 The Tribunals are specifically required to notify DIMIA of the lodgement of applications for review (sections 352 and 418 of the Act), and of the identity of migration agents (section 332G of the Act), and of the handing down of decisions (sections 368A and 430A of the Act) and to provide DIMIA with copies of decisions and further evidence or other material on which findings were based (sections 368 and 430). The Minister or DIMIA may be provided with access, electronically or otherwise, to information held by the Tribunals, including case statistics, the status of cases, hearing dates and applicant details. DIMIA officers undertaking enquiries, dealing with other visa applications or preparing submissions may arrange to inspect or be provided with a copy of relevant Tribunal and DIMIA files in the possession of the Tribunals. The Agencies recognise that disclosure of personal information for a purpose under the Act is provided for in sections 377 and 439 of the Act.

¹ <http://www.apsc.gov.au/mac/technology.htm>

4.9 DIMIA may during the course of the review forward material to the Tribunals for linking to DIMIA case files or documents. The Tribunals undertake to link such material to the relevant case file.

Case enquiries

4.10 Tribunal and DIMIA officers may liaise directly on a range of matters. These matters may include requests for case files and documents; requests to the DIMIA Document Verification Section to verify documents or conduct handwriting analysis; requests for further information in relation to the processing or handling of a matter; requests to obtain information from education providers where those education providers are unwilling to provide that information to the Tribunal; facilitating arrangements for medical examinations and tests; facilitating the processing of health and other assessments.

Expedited consideration

4.11 DIMIA may request the Tribunals to expedite consideration of unmeritorious/frivolous cases or those requiring expedited hearing for urgent compassionate reasons. The Tribunals shall respond to such requests within their available resources and priorities.

Secretary's submissions

4.12 The Secretary can give submissions to the Tribunals on issues arising in relation to a particular decision under review (subsections 358(2) and 423(2) of the Act), or in relation to a particular caseload or a general issue.

4.13 Submissions may be made by the Secretary at any stage of the review process. Submissions are to be sent to the Registrar.

4.14 The Tribunals shall provide MRT hearing schedules to DIMIA (Director Special Residence Section) and copied to State/Territory Directors on a fortnightly basis covering hearings scheduled 1-3 months in advance. If a submission is considered appropriate in relation to a particular case or to a particular caseload, the Secretary may provide the MRT with a written submission prior to the scheduled hearing date. Any such submissions made shall be reported at the respective National liaison meetings in clause 3.1.

4.15 The Tribunals may also invite the Secretary to make a submission in relation to a particular case or a particular caseload (subsections 359(2) and 424(2) of the Act). Any such invitations will be sent by the Registrar to the Secretary. Where a submission is to be provided, the submission shall be forwarded to the Registrar. Such submissions are to be provided as soon as practicable after the date of the invitation by the Registrar to make a submission. If the Tribunal has invited the Secretary to make a submission within a specified timeframe and the submission is not provided within the time specified or an extension agreed to by the Tribunal, the Tribunal may proceed to make a decision on the matter without taking any further action to obtain the information.

4.16 In cases where the MRT is considering the possible exercise of a waiver of requirements in relation to health criteria in Schedule 4 to the Migration Regulations, the MRT shall give consideration to inviting the Secretary to make a submission on whether the grant of a visa would be unlikely to result in an undue cost to the Australian community, or unlikely to result in undue prejudice to access to health care or community services.

4.17 Where a submission is received from the Secretary in relation to a particular case or a particular caseload or a general issue, the submission may be updated or withdrawn, as appropriate, by the Secretary. As a guide to the currency of such submissions, DIMIA shall report at each respective National Liaison meeting noted in Clause 3.1 those submissions which are in force at the particular date of that liaison meeting.

Confidentiality of information

4.18 In giving and receiving both national security information and non-national security information, the Agencies shall treat such information in accordance with the requirements of the Commonwealth Protective Security Manual and in accordance with the provisions of the Act.²

Security sensitive information

4.19 Consistent with Government's expectation, information regarding potential threats or breaches of law and order in relation to the Tribunals' operations shall be provided to DIMIA by the Registrar or, where DIMIA is in possession of such information, by DIMIA to the Registrar, in accordance with the Agencies' obligations under the Act and the *Privacy Act 1988*, particularly Information Privacy Principle 11.

Certified information

4.20 The Agencies recognise that DIMIA shall not provide the Tribunals with information covered by sections 375 and 437 of the Act.

4.21 Where DIMIA gives the Tribunals information that is subject to a certificate or notice under sections 375A, 376 or 438 of the Act, the Tribunals shall ensure that the information is handled in accordance with the Act. As far as possible, any certificate or notice should identify the specific information that is covered (e.g. the identity of an informant), rather than referring to entire documents. DIMIA will exercise care in identifying all documents where the information may be set out or referred to.

4.22 Where the Tribunals form the view that the Minister's certification in a particular case should be revisited or that uncertified information on the DIMIA file should be reconsidered with a view to certification, the Registrar shall consult with the Director, Special Residence Section (in the case of the MRT), or the Director, Protection Policy Section (in the case of the RRT), who will respond in a timely manner.

² Parts 5 and 7 of the Act refer.

Section 351 and section 417 matters

4.23 In accordance with any agreed procedures, the Tribunals shall notify DIMIA (the Ministerial Interventions and Global processing Section, ACT Regional Office, in relation to MRT matters, or the Director, International Obligations and Intervention Section, in relation to RRT matters) of those cases considered by a Tribunal member to exhibit features or circumstances which might be referred to the Ministers for their consideration of the exercise of their public interest powers under sections 345, 351, 391, 417, 454 and 501J of the Act.

Freedom of Information (FOI) applications

4.24 The Agencies shall work cooperatively to respond to FOI applications lodged in respect of DIMIA's and the Tribunals' files.

4.25 The Agencies agree that when FOI requests are received by the Agencies in relation to DIMIA files held by the Tribunals, pursuant to local arrangements, the DIMIA files shall be returned in a timely manner to the relevant State/Territory DIMIA office for processing that part of the request. Where this involves the transfer of an FOI request, the transferring agency shall notify in writing both the person who made the FOI request and the receiving agency of the transfer.

Migration Agent Integrity Measures

4.26 DIMIA and the Tribunals shall work cooperatively to achieve the objectives of the *Migration Legislation Amendment (Migration Agents Integrity Measures) Act 2004*.

4.27 Information provided to the Tribunals by migration agents in accordance with section 312B of the Act shall be forwarded to the DIMIA Agent Initiatives and Monitoring Section by the Tribunals' Policy and Procedures Team in accordance with section 332G of the Act on a regular basis.

4.28 The Agent Initiatives and Monitoring Section shall forward to the Registrar regular updates on any action taken by the Migration Agents Registration Authority (MARA) to sanction a migration agent.

4.29 The Tribunals shall regularly update the Agent Initiatives and Monitoring Section on complaints made by the Tribunals to the MARA.

5. Other information exchange arrangements

Commercial-in-confidence information

5.1 The Agencies agree that where information has been provided to an Agency by an individual or an organisation on a 'commercial-in-confidence' basis and that information is also provided to the other Agency, it will be handled by all Agencies on that commercial-in-confidence basis.

Document examination

5.2 The DIMIA Document Examination Unit (DEU) shall provide document examination services and make referrals to overseas posts as required on a case by case basis on receipt of requests for assistance from the Tribunals. Such services and referrals shall be attended to in a timely manner.

5.3 Requests for examination of potentially fraudulent documents are referred by the Tribunals to the relevant local DEU. The Tribunals shall forward the original documents with a detailed written request incorporating any relevant comments on the documents.

Country information

5.4 DIMIA's Country Information and Protection Support Section undertakes to provide the Tribunals with ongoing access to CISNET and to provide to the Tribunals' Country Research and Library Services Section any other relevant country research products or information.

5.5 The Tribunals' Country Research and Library Services Section undertakes to provide to DIMIA's Country Information and Protection Support Section with edited research responses on a monthly basis for inclusion on CISNET and to provide any other relevant Tribunal country research products or information.

Principal Member's reports to the Minister

5.6 The Principal Member shall report to the Minister three times per annum on significant strategic and operational issues, with a copy to the Secretary (Attention: Director, Review Taskforce Section). The Principal Member shall also provide an Annual Report on the operations of each Tribunal, for tabling in Parliament.

Ministerial Briefs, Ministerial correspondence, Questions on Notice and Possible Minister's Questions

5.7 The Agencies agree to cooperate in the preparation of Ministerial briefs and responses to ministerial correspondence, Questions on Notice and Possible Minister's Questions on relevant policies and operational issues. DIMIA shall forward requests for information and input for responses to the Registrar, who shall respond in a timely manner.

5.8 The Tribunals undertake to provide timely assistance, information and advice upon receipt of requests for input to responses to ministerial correspondence. Such requests for assistance shall be directed in writing to the Registrar.

Media contact

5.9 In accordance with the Tribunals' media contact protocol, the Tribunals shall contact DIMIA Public Affairs Section and advise the details of media contact in relation to any significant issues or high profile cases of interest to the Government, to DIMIA or to the Tribunals.

5.10 DIMIA shall notify the Registrar, where appropriate, of media related issues of relevance to the Tribunals' operations.

6. Litigation of Tribunal decisions

6.1 The Agencies shall work co-operatively to ensure the efficient conduct of litigation relating to Tribunal decisions, including responding to all reasonable requests by the Agencies in a timely manner.

6.2 DIMIA shall notify the Tribunals in a timely manner when an application for judicial review or appeal has been filed in the Courts in respect of a Tribunal decision.

6.3 The Tribunals shall forward a copy of the relevant Tribunal documents to DIMIA, where requested, in a timely manner.

6.4 DIMIA shall consult with the Tribunals, where possible and appropriate, on the conduct of litigation on behalf of the Minister relating to Tribunal decisions.

6.5 On conclusion of a matter, DIMIA shall notify the Tribunals in a timely manner of the outcome of the litigation, and shall provide copies of the Court orders. Where litigation results in the matter being remitted to the Tribunal for reconsideration pursuant to clause 3.4, DIMIA shall arrange for the return of the DIMIA file to the Tribunal in a timely manner.

7. Quality assurance of Agencies' decisions

7.1 The Agencies are committed to continuous improvement of decision making by decision makers.

7.2 The Agencies will regularly review their processes to ensure decisions continue to be made effectively, efficiently and lawfully, and agree to further develop advisory arrangements for issues or concerns related to the quality of decision-making.

7.3 In the light of the Portfolio's objectives to enhance quality assurance, this will be a standing item on the agenda of the six monthly National liaison meetings of the Agencies (clause 3.1 refers).

8. Information Technology

Information technology systems integration

8.1 The Agencies are committed to maximising connectivity between their information technology systems. In order to enhance systems connectivity, the Agencies agree to consult with each other in relation to all new proposed information technology systems and arrangements that will impact on the Agencies' portfolio responsibilities.

8.2 The Agencies understand that in establishing new information systems, including integrated systems, the Agencies will work to ensure that the integrity and confidentiality of data is maintained and that access to information technology systems is granted within the Agencies strictly on a need to know basis and in accordance with the Agencies' Information Technology Security policies.

8.3 DIMIA shall consult the Tribunals regarding the continuing development of DIMIA systems used by the Tribunals. The Tribunals shall be invited to participate in any technical and user working groups affecting such systems.

LEGEND and Country Information Service Network (CISNET)

8.4 DIMIA shall provide technical support to the Tribunals for access to LEGEND and CISNET.

8.5 Instructions and Legend Section and Country Information and Protection Support Section shall provide training to Tribunal members and staff in relation to LEGEND and CISNET respectively as required, with the Tribunals meeting the travel costs associated with such training.

Integrated Client System Environment (ICSE) and Migration Program Management System (MPMS)

8.6 DIMIA's ICSE Helpdesk in the ICSE Business Coordination Unit shall provide support and ongoing access to ICSE to appropriate Tribunal staff.

8.7 Movement Alerts and Border Systems Section shall provide support and ongoing access to Movement records and MPMS to appropriate Tribunal staff.

SAP

8.8 DIMIA will provide ongoing access to SAP for use as the Tribunals' financial management information system. DIMIA maintains the SAP Procedures Manual and is responsible for the development of SAP system enhancements. SAP change management protocols that apply to DIMIA shall be applied to the Tribunals.

8.9 Corporate Treasury Section shall reconcile the RRT's Administrative Receipts Clearing Account in SAP, load the Tribunal's electronic bank statements and process daily payment runs on a fee-free basis.

Information Technology security

8.10 Information Technology systems shall be administered in accordance with the Australian Government Information Technology Security Manual (ACSI 33) and in accordance with DIMIA's and Tribunals' Information Technology Security policies.

8.11 Risk management principles shall be applied in the administration of IT Security and a system security plan shall be put in place for any new systems that are developed.

Communications infrastructure

8.12 Secure communications between the Agencies, including exchange of data and access to systems, requires provision of a secure data communications link. Currently this link is provided by outside service providers on behalf of DIMIA. The speed and reliability of this link is essential to the operations of the Agencies. DIMIA shall arrange with its outside service providers to provide regular reporting on the link, and if necessitated by volume of traffic, arrange for the link to be upgraded as needed to maintain speedy and reliable communications between the Agencies. DIMIA will nominate a key contact for communications regarding this link.

Case management systems

8.13 The Tribunals shall provide support and ongoing access to the MRT CMS to appropriate DIMIA staff. The Tribunals shall endeavour to provide equivalent access to RRT information, prior to the development of a Joint CMS.

9. MRT and RRT financial arrangements

9.1 The Tribunals shall comply with deadlines set from time to time by the Department of Finance and Administration (DoFA) and DIMIA in respect of those functions that demand a Portfolio level response (eg Portfolio Budget Statements and Budget Submissions).

9.2 The Tribunals shall comply with timeframes established by the Australian National Audit Office (ANAO) and DIMIA in the preparation of the annual Financial Statements.

9.3 The Tribunals shall provide to DIMIA's Chief Financial Officer a copy of the Tribunals' monthly financial reports.

Agreed cost arrangements

9.4 Each Agency shall bear its own costs of providing information, training, service or assistance, except where a cost is agreed under this MOU or a related local agreement.

Annual MRT and RRT SAP charge

9.5 DIMIA shall collect the annual SAP charge from the Tribunals' Finance and Property Section.

Post-RRT decision fee

9.6 DIMIA's Resource Management Section (VIC Debtors) and Financial Operations Section (Central Office) shall administer the collection of the post-RRT decision fee on behalf of the RRT and do all things necessary to ensure compliance with the *Financial Management and Accountability Act 1997*.

9.7 DIMIA's Chief Executive Instruction on Debt Management and DIMIA's related Migration Series Instruction (MSI) (Visa applicants with debts to the Commonwealth (MSI 377 or as reissued)) shall apply for the purposes of debt management and associated administration of the post-RRT decision fee.

9.8 The RRT agrees to inform VIC Debtors once a week of the details of those clients for whom the post-RRT decision fee has become payable during that week and of those clients whose fee liability status may have changed during that week.

9.9 On a quarterly basis, VIC Debtors shall submit to the Tribunals' Assistant Director Finance an itemised invoice in respect of this service.

9.10 On a quarterly basis, DIMIA's Corporate Treasury Section shall submit to the Tribunals' Assistant Director Finance an invoice in respect of the Merchant Services Fees paid by DIMIA on behalf of the RRT for all post-RRT decision fees paid by credit card.

9.11 On a quarterly basis, VIC Debtors shall provide to the Tribunals' Assistant Director Finance an up to date report on post-RRT decision fees paid and outstanding at the end of that quarter.

9.12 The Tribunals' Assistant Director Finance and VIC Debtors shall liaise to respond to case-specific complaints received regarding the imposition of the post-RRT decision fee.

9.13 VIC Debtors shall deal with all telephone enquiries about the post-RRT decision fee. The RRT shall refer any telephone enquiries received to the relevant contact number in VIC Debtors (**Appendix 1** refers), which is provided in the RRT notification of decision letter.

Fraud control

9.14 The Agencies shall act in accordance with their respective fraud control plans.

10. Business continuity arrangements

10.1 The MOU is based on the assumption of the Agencies' businesses continuing uninterrupted. However, the Agencies acknowledge that it is possible that an event could impede or disrupt business operations or objectives.

10.2 In the event of a power outage (or a business continuity event) that disrupts the operations of any or all of the Agencies, the Agencies shall co-operate to assist continued operations.

DATED this 25 day of November 2005

[Signed Andrew Metcalfe]

Andrew Metcalfe

Secretary, Department of Immigration and Multicultural and Indigenous Affairs

[Signed Steve Karas]

Steve Karas AO

Principal Member, Migration Review Tribunal and Refugee Review Tribunal

**APPENDIX 1:
CONTACT DETAILS FOR SPECIFIED PERSONNEL (as at 1 November 2005)**

DIMIA:

a) For routine communication in respect of the services to be provided by both parties, the contact officers within the relevant functional areas of DIMIA are the officials listed below:

<i>Section</i>	<i>Contact</i>	<i>Function</i>	<i>Phone</i>
Review Task Force	Ken McInnis	Director Review (MRT/RRT)	02 6264-4189
Special Residence	Frank Johnston	Director Review (MRT)	02 6223-8120
Protection Policy	Beth Powell	A/g Director Review (RRT)	02 6264-4384
International Obligations and Intervention:	Robyn Legg	Director	02 6264-1631
Refugee and Humanitarian Litigation	Juliet Carrington	Director Litigation (RRT)	02 6264-3036
Migration and Temporary Entry Litigation	Jackie Davis	Director Litigation (MRT)	02 6264-2658
Agents Initiatives and Monitoring	Julie Campbell	Director Migration Agents (MARA)	02 6264-2845
Migration Fraud and Investigations	Sharon Watts	A/g Director	02 6264-2985
Budget Strategy	Yvette Whittaker	A/g Director Budget/PBS/PAES	02 6264-1016
Corporate Treasury	Gloria Henderson	Director Clearing A/c reco (SAP) Daily payment runs (SAP) Bank statements (SAP)	02 6264-2266
Financial Operations	Robert Brady	Director Post Decision fee Asset Management	02 6264-3971
Financial Management & Reporting	Michael Fileman	Director Financial Statements AC/Fin pol/legislation Fin Delegations Fin Management	02 6264-1049

Corporate Operations (VIC Debtors)	Leah Nichles Tricia Whitmore	State Manager Manager Corporate A/C Receivable	03 9235-3288 03 9235-3344
SAP Client Support	Greg Saphin Help Desk	A/g Director SAP/Admin SAP	02 6223-8207 02 6223-8208 02 6223-8585
SAP Technical Services	Peter Bond	A/g Director	02 6264-2200
Country Information and Protection Support	David Blucher	A/g Director Country Info Dbase	02 6264-2206
Internal Audit	Lin White	Director IA/RM Comcover Mgr	02 6264-8301
HR Support	Marcia Hewitt	A/g Director National OH&S Mgr	02 6264-2442
Values and Conduct Section	Sarah Dinning	Director	02 6264-2529
Information Distribution	Alexa Turner	A/g Director Technical Support - LEGEND and CISNET Departmental forms	02 6223-8150
Instructions and Legend	Pam Lohmeyer Help Desk	Director Legend training and help desk LEGEND	02 6264-2055 02 6264-3843
Protective Security	Peter Long	Director	02 6264-3866
IT Security	Glenn Surman	Director Access Control	02 6264-1433
Data and Records Management	Anita Ernst	DIMIA Records Mgr	02 6264-3429
Outsourcing Australia	Tracy Houston	National Records Mgr	02 6264-3913
ICSE Architecture and Development	Ann Marie Tarry	Director	02 6256-8150
ICSE Requirements Analysis and Design	Ian Fyfe	A/g Director	02 6256-8161
Global Systems Business Interface	Tim Drury	Director	02 6256-8189
Contracts and Procurement Advice	Bevan McDonald	A/g Director Travel Contract Mgr	02 6264-8541

MRT/RRT:

b) For routine communication in respect of the services to be provided by both parties, the contact officers within the Tribunals are the officials listed below:

<i>Function</i>	<i>Contact</i>	<i>Phone</i>
<u>Principal Registry</u>		
Registrar	John Lynch	02 9276-5062
Deputy Registrar	Rhys Jones	02 9276-5063
Director Country Research & Library Services	Pamela Summers	02 9276-5113
Assistant Director Finance	Greg Parkes	02 9276-5403
Director Human Resources	Virginia Billington	02 9276-5110
Director IT and Communications	Chris MacDonald	02 9276-5111
Director Legal Services	Sobet Haddad	02 9276-5112
Agency Security Adviser	Jay Lynn	02 9276 5348
Executive Assistant (Melbourne)	Dianne Eva	03 8600-5854
Executive Officer (Sydney)	Ailsa Wilson	02 9276-5064
<u>MRT and RRT NSW Registries</u>		
District Registrar	Jonathan Willoughby Thomas	02 9276-5114
<u>MRT and RRT Victorian Registries</u>		
District Registrar	Hilary Lovibond	03 8600-5802

APPENDIX 2: EXTRACTS of RELEVANT STATUTORY PROVISIONS

Migration Act 1958 (Cth)

Part 3 – Migration agents and immigration assistance

Division 5 – Obligations of registered migration agents

Section 312B *Notification of giving of immigration assistance to review applicants*

- (1) If:
- (a) a registered migration agent gives immigration assistance to a person in respect of a review application made by the person; and
 - (b) the agent gives the assistance after having agreed to represent the person; the agent must notify the review authority concerned in accordance with the regulations and within the period worked out in accordance with the regulations.

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) In this section:
review application means an application for review by a review authority of a decision to refuse to grant a person a visa.

Division 7 – Other things

Section 332F *Disclosure of personal information by the Secretary*

- (1) The Secretary may disclose personal information about a [registered migration agent](#), or an [inactive migration agent](#), to a [review authority](#).
- (2) However, the Secretary may do so only in the [prescribed circumstances](#).
- (3) The regulations may prescribe circumstances in which the review authority may use or disclose personal information disclosed under subsection (1).
- (4) In this section:

inactive migration agent has the meaning given by section [306B](#).

personal information has the same meaning as in the *Privacy Act 1988*.

Section 332G *Disclosure of personal information by a review authority*

Discretionary disclosure

- (1) A review authority may disclose personal information about a registered migration agent, or an inactive migration agent, to the Secretary or an authorised officer.
- (2) However, a review authority may do so only in the prescribed circumstances.
- (3) The regulations may prescribe circumstances in which the Secretary or authorised officer may use or disclose personal information disclosed under subsection (1).

Mandatory disclosure

- (4) If a registered migration agent notifies a review authority that the agent has given immigration assistance to a person in respect of a review application made by the person, the review authority must notify the Department, in accordance with the regulations, that the agent has given immigration assistance to the person in respect of the review application.

Definitions

- (5) In this section:

inactive migration agent has the meaning given by section 306B.

personal information has the same meaning as in the *Privacy Act 1988*.

review application means an application for review by a review authority of a decision to refuse to grant a person a visa.

Part 5 – Review of decisions

Division 3 – Review of decisions by Migration Review Tribunal

Section 351 *Minister may substitute more favourable decision*

- (1) If the Minister thinks that it is in the public interest to do so, the Minister may substitute for a decision of the Tribunal under section 349 another decision, being a decision that is more favourable to the applicant, whether or not the Tribunal had the power to make that other decision.
- (2) In exercising the power under subsection (1), the Minister is not bound by Subdivision AA or AC of Division 3 of Part 2 or by the regulations, but is bound by all other provisions of this Act.
- (3) The power under subsection (1) may only be exercised by the Minister personally.
- (4) If the Minister substitutes a decision under subsection (1), he or she is to cause to be laid before each House of the Parliament a statement that:
 - (a) sets out the decision of the Tribunal; and
 - (b) sets out the decision substituted by the Minister; and
 - (c) sets out the reasons for the Minister's decision, referring in particular to the Minister's reasons for thinking that his or her actions are in the public interest.
- (5) A statement made under subsection (4) is not to include:
 - (a) the name of the applicant; or
 - (b) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person.
- (6) A statement under subsection (4) is to be laid before each House of the Parliament within 15 sitting days of that House after:
 - (a) if the decision is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or
 - (b) if a decision is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.
- (7) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.

Section 352 [Secretary to be notified of application for review by Migration Review Tribunal](#)

- (1) If an application for review is made to the [Migration Review Tribunal](#), the Registrar must, as soon as practicable, give the Secretary written notice of the making of the application.
- (2) Subject to subsection (3), the Secretary must, within 10 working days after being notified of the application, give to the Registrar the [prescribed](#) number of copies of a statement about the decision under review that:
 - (a) sets out the findings of fact made by the person who made the decision; and
 - (b) refers to the evidence on which those findings were based; and
 - (c) gives the reasons for the decision.
- (3) If the application is for review of an [MRT-reviewable decision](#) covered by [subsection 338\(4\)](#), the Secretary must comply with the requirements of subsection (2) within 2 working days after being notified of the application.
- (4) The Secretary must, as soon as is practicable after being notified of the application, give to the Registrar each other document, or part of a document, that is in the Secretary's possession or control and is considered by the Secretary to be relevant to the review of the decision.

Division 5 – Conduct of Review

Section 358 *Documents to be given to the Tribunal*

- (1) An applicant for review by the Tribunal may give the Tribunal:
 - (a) a written statement in relation to any matter of fact that the applicant wishes the Tribunal to consider; and
 - (b) written arguments relating to the issues arising in relation to the decision under review.
- (2) The Secretary may give the Tribunal written argument relating to the issues arising in relation to the decision under review.

Section 359 *Tribunal may seek additional information*

- (1) In conducting the review, the Tribunal may get any information that it considers relevant. However, if the Tribunal gets such information, the Tribunal must have regard to that information in making the decision on the review.
- (2) Without limiting subsection (1), the Tribunal may invite a person to give additional information.
- (3) If an invitation is given to a person other than the Secretary, the invitation must be given:
 - (a) except where paragraph (b) applies—by one of the methods specified in section 379A; or
 - (b) if the invitation is given to a person in immigration detention—by a method prescribed for the purposes of giving documents to such a person.
- (4) If an invitation is given to the Secretary, the invitation must be given by one of the methods specified in section 379B.

Section 363 [Powers of the Tribunal etc.](#)

- (1) For the purpose of the review of a decision, the Tribunal may:
 - (a) take evidence on oath or affirmation;
 - (b) adjourn the review from time to time;
 - (c) subject to [sections 377](#) and [378](#), give information to the applicant and to the Secretary; or
 - (d) require the Secretary to arrange for the making of any investigation, or any medical examination, that the Tribunal thinks necessary with respect to the review, and to give to the Tribunal a report of that investigation or examination.

Division 6 - Decisions of Tribunal

Section 368 **Tribunal to record its decisions etc.**

- (1) Where the Tribunal makes its decision on a review, the Tribunal must, subject to [paragraphs 375A\(2\)\(b\)](#) and [376\(3\)\(b\)](#), prepare a written statement that:
 - (a) sets out the decision of the Tribunal on the review;
 - (b) sets out the reasons for the decision;
 - (c) sets out the findings on any material questions of fact; and
 - (d) refers to the evidence or any other material on which the findings of fact were based.

[Subsection (2) was omitted by the *Migration Legislation Amendment Act 1998, No. 113 of 1998*]

- (3) Where the Tribunal has prepared the written statement, the Tribunal shall:
 - (a) return to the Secretary any document that the Secretary has provided in relation to the review; and
 - (b) give the Secretary a copy of any other document that contains evidence or material on which the findings of fact were based.

Section 368A **Tribunal must invite parties to handing down of decision**

- (1) This section applies to any decision on a review by the Tribunal other than the following decisions:
 - (a) a decision that is given orally;
 - (b) a decision on the application of a person who is in [immigration detention](#) because of:
 - (i) a decision to refuse to grant him or her a [bridging visa](#); or
 - (ii) a decision to cancel his or her bridging visa.
- (2) The Tribunal must invite the applicant and the Secretary to be present when the decision is handed down.
- (3) The Tribunal must give the applicant and the Secretary written notice of the day on which, and the time and place at which, the decision is to be handed down. The period of notice given must be at least the [prescribed](#) period or, if no period is prescribed, a reasonable period.
- (4) The notice to the applicant must:
 - (a) contain a statement of the effect of [subsection 368B\(6\)](#); and
 - (b) be given to the applicant by one of the methods specified in [section 379A](#).
- (5) The notice to the Secretary must be given by one of the methods specified in [section 379B](#).

Section 368B **Tribunal decision to be handed down**

- (1) This section applies to any decision on a review by the Tribunal other than the following decisions:
 - (a) a decision that is given orally;
 - (b) a decision on the application of a person who is in [immigration detention](#) because of:
 - (i) a decision to refuse to grant him or her a [bridging visa](#); or
 - (ii) a decision to cancel his or her bridging visa.
- (2) On the day, and at the time and place, specified in the notice referred to in [section 368A](#), the decision on the review is to be handed down (on behalf of the Tribunal) by:
 - (a) the Principal Member; or
 - (b) a person authorised in writing by the Principal Member to hand down decisions.An authorisation may set out the circumstances in which a person is authorised to hand down decisions.

- (3) The Tribunal's decision may be handed down:
 - (a) by reading the outcome of the decision; and
 - (b) whether or not either or both the applicant and the Secretary are present.
- (4) The date of the decision is the date on which the decision is handed down.
- (5) If the applicant and the Secretary are present at the handing down of the decision, the Tribunal must give each of them a copy of the statement prepared under [subsection 368\(1\)](#).
- (6) If the applicant is not present at the handing down of the decision, the Tribunal must notify the applicant of the decision by giving the applicant a copy of the statement prepared under [subsection 368\(1\)](#). The copy must be given to the applicant:
 - (a) within 14 days after the day on which the decision is handed down; and
 - (b) by one of the methods specified in [section 379A](#).
- (7) If the Secretary is not present at the handing down of the decision, the Tribunal must give to the Secretary a copy of the statement prepared under subsection 368(1). The copy must be given to the Secretary:
 - (a) within 14 days after the day on which the decision is handed down; and
 - (b) by one of the methods specified in [section 379B](#).
- (8) Without limiting the generality of subsections (6) and (7), an applicant or the Secretary is taken not to be present at the handing down of a decision if:
 - (a) he or she is not at the same location as that of the person who is handing down the decision when the decision is handed down; and
 - (b) the decision is being handed down by:
 - (i) telephone; or
 - (ii) closed-circuit television; or
 - (iii) any other means of communication.
- (9) A reference to the applicant or the Secretary being present at the handing down of the decision includes a reference to a representative of the applicant or Secretary being present.

Section 368D *Tribunal must notify parties (parties not invited to handing down of decision)*

- (1) If the Tribunal gives an oral decision on an application for review, the Tribunal must give the applicant and the Secretary a copy of the statement prepared under [subsection 368\(1\)](#) within 14 days after the decision concerned is made. The applicant is taken to be notified of the decision on the day on which the decision is made.
- (2) If the applicant is in [immigration detention](#) because of:
 - (a) a decision to refuse to grant him or her a [bridging visa](#); or
 - (b) a decision to cancel his or her bridging visa;
 the Tribunal must give the applicant and the Secretary a copy of the statement prepared under [subsection 368\(1\)](#) within 14 days after the decision concerned is made.

Division 8 – Miscellaneous

Section 375 *[Restrictions on disclosure of certain information etc.](#)*

In spite of anything else in this Act, the Secretary shall not give to the Tribunal a document, or information, if the Minister certifies, in writing, that the disclosure of any matter contained in the document, or the disclosure of the information, would be contrary to the public interest:

- (a) because it would prejudice the security, defence or international relations of Australia; or
- (b) because it would involve the disclosure of deliberations or decisions of the Cabinet or of a committee of the Cabinet.

Section 375A ***Certain information only to be disclosed to Tribunal***

- (1) This section applies to a document or information if the Minister:
 - (a) has certified, in writing, that the disclosure, otherwise than to the Tribunal, of any matter contained in the document, or of the information, would be contrary to the public interest for any reason specified in the certificate (other than a reason set out in paragraph 375(a) or (b)); and
 - (b) has included in the certificate a statement that the document or information must only be disclosed to the Tribunal.
- (2) If, pursuant to a requirement of or under this Act, the Secretary gives to the Tribunal a document or information to which this section applies:
 - (a) the Secretary must notify the Tribunal in writing that this section applies to the document or information; and
 - (b) the Tribunal must do all things necessary to ensure that the document or information is not disclosed to any person other than a member of the Tribunal as constituted for the purposes of the particular review.

Section 376 ***Tribunal's discretion in relation to disclosure of certain information etc.***

- (1) This section applies to a document or information if:
 - (a) the Minister:
 - (i) has certified, in writing, that the disclosure of any matter contained in the document, or of the information, would be contrary to the public interest for any reason specified in the certificate (other than a reason set out in paragraph 375(a) or (b)) that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the matter contained in the document, or the information, should not be disclosed; and
 - (ii) has not included a statement in the certificate that the document or information must only be disclosed to the Tribunal; or
 - (b) the document, the matter contained in the document, or the information was given to the Minister, or to an officer of the Department, in confidence and section 375A does not apply to the document or information.
- (2) Where, pursuant to a requirement of or under this Act, the Secretary gives to the Tribunal a document or information to which this section applies, the Secretary:
 - (a) shall notify the Tribunal in writing that this section applies in relation to the document or information; and
 - (b) may give the Tribunal any written advice that the Secretary thinks relevant about the significance of the document or information.
- (3) Where the Tribunal is given a document or information and is notified that this section applies in relation to it, the Tribunal:
 - (a) may, for the purpose of the exercise of its powers, have regard to any matter contained in the document, or to the information; and
 - (b) may, if the Tribunal thinks it appropriate to do so having regard to any advice given by the Secretary pursuant to subsection (2), disclose any matter contained in the document, or the information, to the applicant or to any other person who has given oral or written evidence to the Tribunal.

Division 8A - Giving and receiving review documents

Section 379B ***Methods by which Tribunal gives documents to the Secretary***

Coverage of section

- (1) For the purposes of provisions of this Part or the regulations that:
 - (a) require or permit the Tribunal to give a document to the Secretary; and

- (b) state that the Tribunal must do so by one of the methods specified in this section; the methods are as follows.

Giving by hand

- (2) One method consists of a member, the Registrar, a Deputy Registrar or another officer of the Tribunal, or a person authorised in writing by the Registrar, handing the document to the Secretary or to an authorised officer.

Dispatch by post or by other means

- (3) Another method consists of a member, the Registrar, a Deputy Registrar or another officer of the Tribunal, dating the document, and then dispatching it:
 - (a) within 3 working days (in the place of dispatch) of the date of the document; and
 - (b) by post or by other means; and
 - (c) to an address, notified to the Tribunal in writing by the Secretary, to which such documents can be dispatched.

Transmission by fax, e-mail or other electronic means

- (4) Another method consists of a member, the Registrar, a Deputy Registrar or another officer of the Tribunal, transmitting the document by:
 - (a) fax; or
 - (b) e-mail; or
 - (c) other electronic means;to the last fax number, e-mail address or other electronic address notified to the Tribunal in writing by the Secretary for the purpose.

Section 379D *When the Secretary is taken to have received a document from the Tribunal*

- (1) This section applies if the Tribunal gives a document to the Secretary by one of the methods specified in [section 379B](#) (including in a case covered by [section 379AA](#)).

Giving by hand

- (2) If the Tribunal gives a document to the Secretary by the method in [subsection 379B\(2\)](#) (which involves handing the document to the Secretary or to an authorised officer), the Secretary is taken to have received the document when it is handed to the Secretary or to the authorised officer.

Dispatch by post or by other means

- (3) If the Tribunal gives a document to the Secretary by the method in [subsection 379B\(3\)](#) (which involves dispatching the document by post or by other means), the Secretary is taken to have received the document:
 - (a) if the document was dispatched from a place in Australia to an address in Australia—7 working days (in the place of that address) after the date of the document; or
 - (b) in any other case—21 days after the date of the document.

Transmission by fax, e-mail or other electronic means

- (4) If the Tribunal gives a document to the Secretary by the method in [subsection 379B\(4\)](#) (which involves transmitting the document by fax, e-mail or other electronic means), the Secretary is taken to have received the document at the end of the day on which the document is transmitted.
- (5) Subsection (4) applies despite section 14 of the Electronic Transactions Act 1999.

Division 9 – Referral of decisions to Administrative Appeals Tribunal

Section 391 *Minister may substitute more favourable decision*

- (1) If the Minister thinks that it is in the public interest to do so, the Minister may substitute for a decision of the Administrative Appeals Tribunal in relation to an MRT-reviewable decision another decision, being a decision that is more favourable to the applicant, whether or not the Administrative Appeals Tribunal had the power to make that other decision.
- (2) In exercising the power under subsection (1), the Minister is not bound by Subdivision AA or AC of Division 3 of Part 2 or by the regulations, but is bound by all other provisions of this Act.
- (3) The power under subsection (1) may only be exercised by the Minister personally.
- (4) If the Minister substitutes a decision under subsection (1), he or she is to cause to be laid before each House of the Parliament a statement that:
 - (a) sets out the decision of the Administrative Appeals Tribunal; and
 - (b) sets out the decision substituted by the Minister; and
 - (c) sets out the reasons for the Minister's decision, referring in particular to the Minister's reasons for thinking that his or her actions are in the public interest.
- (5) A statement made under subsection (4) is not to include:
 - (a) the name of the applicant; or
 - (b) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person.
- (6) A statement under subsection (4) is to be laid before each House of the Parliament within 15 sitting days of that House after:
 - (a) if the decision is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or
 - (b) if a decision is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.
- (7) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.

Part 7 – Review of protection visa decisions

Division 2 – Review of decisions by Refugee Review Tribunal

Section 417 *Minister may substitute more favourable decision*

- (1) If the Minister thinks that it is in the public interest to do so, the Minister may substitute for a decision of the Tribunal under section 415 another decision, being a decision that is more favourable to the applicant, whether or not the Tribunal had the power to make that other decision.
- (2) In exercising the power under subsection (1) on or after 1 September 1994, the Minister is not bound by Subdivision AA or AC of Division 3 of Part 2 or by the regulations, but is bound by all other provisions of this Act.
- (3) The power under subsection (1) may only be exercised by the Minister personally.
- (4) If the Minister substitutes a decision under subsection (1), he or she must cause to be laid before each House of the Parliament a statement that:
 - (a) sets out the decision of the Tribunal; and

- (b) sets out the decision substituted by the Minister; and
 - (c) sets out the reasons for the Minister's decision, referring in particular to the Minister's reasons for thinking that his or her actions are in the public interest.
- (5) A statement made under subsection (4) is not to include:
- (a) the name of the applicant; or
 - (b) any information that may identify the applicant; or
 - (c) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person or any information that may identify that other person.
- (6) A statement under subsection (4) is to be laid before each House of the Parliament within 15 sitting days of that House after:
- (a) if the decision is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or
 - (b) if a decision is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.
- (7) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.

Section 418 *Secretary to be notified of application for review by Refugee Review Tribunal*

- (1) If an application for review is made to the Refugee Review Tribunal, the Registrar must, as soon as practicable, give the Secretary written notice of the making of the application.
- (2) The Secretary must, within 10 working days after being notified of the application, give to the Registrar [the prescribed number](#) of copies of a statement about the decision under review that:
- (a) sets out the findings of fact made by the person who made the decision; and
 - (b) refers to the evidence on which those findings were based; and
 - (c) gives the reasons for the decision.
- (3) The Secretary must, as soon as is practicable after being notified of the application, give to the Registrar each other document, or part of a document, that is in the Secretary's possession or control and is considered by the Secretary to be relevant to the review of the decision.

Division 4—Conduct of review

Section 423 *Documents to be given to the Refugee Review Tribunal*

- (1) An applicant for review by the Tribunal may give the Registrar:
- (a) a statutory declaration in relation to any matter of fact that the applicant wishes the Tribunal to consider; and
 - (b) written arguments relating to the issues arising in relation to the decision under review.
- (2) The Secretary may give the Registrar written argument relating to the issues arising in relation to the decision under review.

Division 5 - Decisions of Refugee Review Tribunal

Section 430 *[Refugee Review Tribunal to record its decisions etc.](#)*

- (1) Where the Tribunal makes its decision on a review, the Tribunal must prepare a written statement that:
- (a) sets out the decision of the Tribunal on the review; and
 - (b) sets out the reasons for the decision; and
 - (c) sets out the findings on any material questions of fact; and

- (d) refers to the evidence or any other material on which the findings of fact were based.

[Subsection 430(2) was repealed by the *Migration Legislation Amendment Act (No. 1) 1998* (Act No. 113 of 1998)]

- (3) Where the Tribunal has prepared the written statement, the Tribunal must:
 - (a) return to the Secretary any document that the Secretary has provided in relation to the review; and
 - (b) give the Secretary a copy of any other document that contains evidence or material on which the findings of fact were based.

Section 430A *Tribunal must invite parties to handing down of decision*

- (1) This section applies to any decision on a review by the Tribunal other than the following decisions:
 - (a) a decision that is given orally;
 - (b) a decision on the application of a person who is in [immigration detention](#).
- (2) The Tribunal must invite the applicant and the Secretary to be present when the decision is handed down.
- (3) The Tribunal must give the applicant and the Secretary written notice of the day on which, and the time and place at which, the decision is to be handed down. The period of notice given must be at least the [prescribed](#) period or, if no period is prescribed, a reasonable period.
- (4) The notice to the applicant must:
 - (a) contain a statement of the effect of [subsection 430B\(6\)](#); and
 - (b) be given to the applicant by one of the methods specified in [section 441A](#).
- (5) The notice to the Secretary must be given by one of the methods specified in [section 441B](#).

Section 430B *Tribunal decision to be handed down*

- (1) This section applies to any decision on a review by the Tribunal other than the following decisions:
 - (a) a decision that is given orally;
 - (b) a decision on the application of a person who is in [immigration detention](#).
- (2) On the day, and at the time and place, specified in the notice referred to in [section 430A](#), the decision on the review is to be handed down (on behalf of the Tribunal) by:
 - (a) the Principal Member; or
 - (b) a person authorised in writing by the Principal Member to hand down decisions.An authorisation may set out the circumstances in which a person is authorised to hand down decisions.
- (3) The Tribunal's decision may be handed down:
 - (a) by reading the outcome of the decision; and
 - (b) whether or not either or both the applicant and the Secretary are present.
- (4) The date of the decision is the date on which the decision is handed down.
- (5) If the applicant and the Secretary are present at the handing down of the decision, the Tribunal must give each of them a copy of the statement prepared under [subsection 430\(1\)](#).
- (6) If the applicant is not present at the handing down of the decision, the Tribunal must notify the applicant of the decision by giving the applicant a copy of the statement prepared under [subsection 430\(1\)](#). The copy must be given to the applicant:
 - (a) within 14 days after the day on which the decision is handed down; and
 - (b) by one of the methods specified in [section 441A](#).

- (7) If the Secretary is not present at the handing down of the decision, the Tribunal must give to the Secretary a copy of the statement prepared under [subsection 430\(1\)](#). The copy must be given to the Secretary:
 - (a) within 14 days after the day on which the decision is handed down; and
 - (b) by one of the methods specified in [section 441B](#).
- (8) Without limiting the generality of subsections (6) and (7), an applicant or the Secretary is taken not to be present at the handing down of a decision if:
 - (a) he or she is not at the same location as that of the person who is handing down the decision when the decision is handed down; and
 - (b) the decision is being handed down by:
 - (i) telephone; or
 - (ii) closed-circuit television; or
 - (iii) any other means of communication.
- (9) A reference to the applicant or the Secretary being present at the handing down of the decision includes a reference to a representative of the applicant or Secretary being present.

Section 430D *Tribunal must notify parties (parties not invited to handing down of decision)*

- (1) If the Tribunal gives an oral decision on an application for review, the Tribunal must give the applicant and the Secretary a copy of the statement prepared under [subsection 430\(1\)](#) within 14 days after the decision concerned is made. The applicant is taken to be notified of the decision on the day on which the decision is made.
- (2) If the applicant is in [immigration detention](#), the Tribunal must give the applicant and the Secretary a copy of the statement prepared under subsection 430(1) within 14 days after the decision concerned is made.

Division 7 - Miscellaneous

Section 437 *Restrictions on disclosure of certain information etc.*

In spite of anything else in this Act, the Secretary must not give to the Tribunal a document, or information, if the Minister certifies, in writing, that the disclosure of any matter contained in the document, or the disclosure of the information, would be contrary to the public interest:

- (a) because it would prejudice the security, defence or international relations of Australia;
- or
- (b) because it would involve the disclosure of deliberations or decisions of the Cabinet or of a committee of the Cabinet.

Section 438 *Refugee Review Tribunal's discretion in relation to disclosure of certain information etc.*

- (1) This section applies to a document or information if:
 - (a) the Minister has certified, in writing, that the disclosure of any matter contained in the document, or the disclosure of the information, would be contrary to the public interest for any reason specified in the certificate (other than a reason set out in paragraph 437(a) or (b)) that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the matter contained in the document, or the information, should not be disclosed; or
 - (b) the document, the matter contained in the document, or the information was given to the Minister, or to an officer of the Department, in confidence.
- (2) If, in compliance with a requirement of or under this Act, the Secretary gives to the Tribunal a document or information to which this section applies, the Secretary:
 - (a) must notify the Tribunal in writing that this section applies in relation to the document or information; and

- (b) may give the Tribunal any written advice that the Secretary thinks relevant about the significance of the document or information.
- (3) If the Tribunal is given a document or information and is notified that this section applies in relation to it, the Tribunal:
 - (a) may, for the purpose of the exercise of its powers, have regard to any matter contained in the document, or to the information; and
 - (b) may, if the Tribunal thinks it appropriate to do so having regard to any advice given by the Secretary under subsection (2), disclose any matter contained in the document, or the information, to the applicant.
- (4) If the Tribunal discloses any matter to the applicant, under subsection (3), the Tribunal must give a direction under section 440 in relation to the information.

Division 7A - Giving and receiving review documents

Section 441B Methods by which Tribunal gives documents to the Secretary

Coverage of section

- (1) For the purposes of provisions of this Part or the regulations that:
 - (a) require or permit the Tribunal to give a document to the Secretary; and
 - (b) state that the Tribunal must do so by one of the methods specified in this section; the methods are as follows.

Giving by hand

- (2) One method consists of a member, the Registrar or an officer of the Tribunal, or a person authorised in writing by the Registrar, handing the document to the Secretary or to an authorised officer.

Dispatch by post or by other means

- (3) Another method consists of a member, the Registrar or an officer of the Tribunal, dating the document, and then dispatching it:
 - (a) within 3 working days (in the place of dispatch) of the date of the document; and
 - (b) by post or by other means; and
 - (c) to an address, notified to the Tribunal in writing by the Secretary, to which such documents can be dispatched.

Transmission by fax, e-mail or other electronic means

- (4) Another method consists of a member, the Registrar or an officer of the Tribunal, transmitting the document by:
 - (a) fax; or
 - (b) e-mail; or
 - (c) other electronic means;
 to the last fax number, e-mail address or other electronic address notified to the Tribunal in writing by the Secretary for the purpose.

Section 441D When the Secretary is taken to have received a document from the Tribunal

- (1) This section applies if the Tribunal gives a document to the Secretary by one of the methods specified in [section 441B](#) (including in a case covered by [section 441AA](#)).

Giving by hand

- (2) If the Tribunal gives a document to the Secretary by the method in [subsection 441B\(2\)](#) (which involves handing the document to the Secretary or to an authorised officer), the Secretary is taken to have received the document when it is handed to the Secretary or to the authorised officer.

Dispatch by post or by other means

- (3) If the Tribunal gives a document to the Secretary by the method in [subsection 441B\(3\)](#) (which involves dispatching the document by post or by other means), the Secretary is taken to have received the document:
 - (a) if the document was dispatched from a place in Australia to an address in Australia—7 working days (in the place of that address) after the date of the document; or
 - (b) in any other case—21 days after the date of the document.

Transmission by fax, e-mail or other electronic means

- (4) If the Tribunal gives a document to the Secretary by the method in [subsection 441B\(4\)](#) (which involves transmitting the document by fax, e-mail or other electronic means), the Secretary is taken to have received the document at the end of the day on which the document is transmitted.
- (5) Subsection (4) applies despite section 14 of the Electronic Transactions Act 1999.

Division 8 – Referral of decisions to Administrative Appeals Tribunal

Section 454 *Minister may substitute more favourable decision*

- (1) If the Minister thinks that it is in the public interest to do so, the Minister may substitute for a decision of the Administrative Appeals Tribunal in relation to an RRT-reviewable decision another decision, being a decision that is more favourable to the applicant, whether or not the Administrative Appeals Tribunal had the power to make that other decision.
- (2) In exercising the power under subsection (1) on or after 1 September 1994, the Minister is not bound by Subdivision AA or AC of Division 3 of Part 2 or by the regulations, but is bound by all other provisions of this Act.
- (3) The power under subsection (1) may only be exercised by the Minister personally.
- (4) If the Minister substitutes a decision under subsection (1), he or she is to cause to be laid before each House of the Parliament a statement that:
 - (a) sets out the decision of the Administrative Appeals Tribunal; and
 - (b) sets out the decision substituted by the Minister; and
 - (c) sets out the reasons for the Minister’s decision, referring in particular to the Minister’s reasons for thinking that his or her actions are in the public interest.
- (5) A statement made under subsection (4) is not to include:
 - (a) the name of the applicant; or
 - (b) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person or any information that may identify that other person.
- (6) A statement under subsection (4) is to be laid before each House of the Parliament within 15 sitting days of that House after:
 - (a) if the decision is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or
 - (b) if a decision is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.

- (7) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.

Part 9 - Miscellaneous

Section 501J Refusal or cancellation of protection visa—Minister may substitute more favourable decision

- (1) If the Minister thinks that it is in the public interest to do so, the Minister may set aside an AAT protection visa decision and substitute another decision that is more favourable to the applicant in the review, whether or not the Administrative Appeals Tribunal had the power to make that other decision.
- (2) For the purposes of this section, an *AAT protection visa decision* is a decision of the Administrative Appeals Tribunal in relation to an application for, or the cancellation of, a protection visa.
- (3) In exercising the power under subsection (1), the Minister is not bound by Subdivision AA or AC of Division 3 of Part 2 or by the regulations, but is bound by all other provisions of this Act.
- (4) The power under subsection (1) may only be exercised by the Minister personally.
- (5) If the Minister substitutes a decision under subsection (1), the Minister must cause to be laid before each House of the Parliament a statement that:
- (a) sets out the decision of the Administrative Appeals Tribunal; and
 - (b) sets out the decision substituted by the Minister; and
 - (c) sets out the reasons for the Minister's decision, referring in particular to the Minister's reasons for thinking that his or her actions are in the public interest.
- (6) A statement made under subsection (5) is not to include:
- (a) the name of the applicant; or
 - (b) any information that may identify the applicant; or
 - (c) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person or any information that may identify that other person.
- (7) A statement under subsection (5) is to be laid before each House of the Parliament within 15 sitting days of that House after:
- (a) if the decision is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or
 - (b) if a decision is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.
- (8) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.

Migration Regulations 1994 (Cth)

Schedule 4 Public interest criteria and related provisions

Part 1 Public interest criteria

- 4007 (1) The applicant:
- ...
- (c) subject to subclause (2), is not a person who has a disease or condition to which the following subparagraphs apply:
- (i) the disease or condition is such that a person who has it would be likely to:
 - (A) require health care or community services; or
 - (B) meet the medical criteria for the provision of a community service; during the period of the applicant's proposed stay in Australia;
 - (ii) provision of the health care or community services relating to the disease or condition would be likely to:
 - (A) result in a significant cost to the Australian community in the areas of health care and community services; or
 - (B) prejudice the access of an Australian citizen or permanent resident to health care or community services;
- regardless of whether the health care or community services will actually be used in connection with the applicant; and
- ...

Migration Agents Regulations 1998 (Cth)

[As amended by Migration Agents Amendment Regulations 2004 (No.2). Amendments underlined come into effect on 2 April 2005]

Regulation 9C Disclosure of personal information by the Secretary

- (1) For subsection 332F (2) of the Act, each of the following is a prescribed circumstance:
- (a) a registered migration agent, or an inactive migration agent, is currently under investigation for possible offences under the Act;
 - (b) a client of a registered migration agent, or an inactive migration agent, is currently under investigation for possible offences under the Act;
 - (c) the Minister is considering referring a registered migration agent, or an inactive migration agent, to the Authority for mandatory sanctioning;
 - (d) the Department is considering making a complaint to the Authority about a registered migration agent, or an inactive migration agent;
 - (e) a registered migration agent, or an inactive migration agent, has been sanctioned by the Authority;
 - (f) the personal information is required to allow a review authority to collect information about the conduct of registered migration agents, or inactive migration agents.
- (2) For subsection 332F (3) of the Act, the review authority may disclose personal information disclosed under subsection 332F (1) of the Act to a relevant professional body if:
- (a) the information is about the conduct of a registered migration agent or an inactive migration agent; and
 - (b) the review authority believes that that conduct may be of concern to the relevant professional body.
- (3) For subregulation (2), **relevant professional body** means a professional body of which the agent is or was a member.

Regulation 9D Disclosure of personal information by a review authority

- (1) For subsection 332G (2) of the Act, each of the following is a prescribed circumstance:
 - (a) a registered migration agent, or an inactive migration agent, is currently under investigation for possible offences under the Act;
 - (b) a client of a registered migration agent, or an inactive migration agent, is currently under investigation for possible offences under the Act;
 - (c) the Minister is considering referring a registered migration agent, or an inactive migration agent, to the Authority for mandatory sanctioning;
 - (d) the Department is considering making a complaint to the Authority about a registered migration agent, or an inactive migration agent;
 - (e) a registered migration agent, or an inactive migration agent, has been sanctioned by the Authority;
 - (f) the personal information is required to allow the Secretary or an authorised officer to collect information about the conduct of registered migration agents, or inactive migration agents.

- (2) For subsection 332G (3) of the Act, the Secretary or authorised officer may disclose personal information disclosed under subsection 332G (1) of the Act to a relevant professional body if:
 - (a) the information is about the conduct of a registered migration agent or an inactive migration agent; and
 - (b) the Secretary or authorised officer believes that that conduct may be of concern to the relevant professional body.

- (3) For subregulation (2), ***relevant professional body*** means a professional body of which the agent is or was a member.

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