

MEMORANDUM OF UNDERSTANDING

CONCERNING THE PROVISION OF

LEGAL AND COUNTRY ADVICE SERVICES

BETWEEN THE

DEPARTMENT OF IMMIGRATION AND CITIZENSHIP (DIAC)

AND THE

REFUGEE REVIEW TRIBUNAL (THE RRT)

This is a Memorandum of Understanding (MOU) between the **Department of Immigration and Citizenship (DIAC)** and the **Refugee Review Tribunal (the RRT)**.

PREAMBLE

- A. This MOU governs the terms and conditions on which Agreed Services will be provided, and sets out the agreed processes which will be followed to ensure the efficient and effective delivery of the Agreed Services described in this document.

TERMS AND CONDITIONS

1. Definitions

1.1 In this MOU the following expressions have these meanings:

- (a) **'Agreed Services'** means the services described in *Part A of Schedule 1*.
- (b) **'ANAO'** means the Australian National Audit Office.
- (c) **'DIAC Principal Contact'** means the person described in *Part A of Schedule 2*.
- (d) **'Input Tax Credit'** means an Input Tax Credit as defined in the GST Law.
- (e) **'GST Law'** means the GST Law as defined in *A New Tax System (Goods and Services Tax) Act 1999*.
- (f) **'Independent Merits Reviewers'** means persons engaged to undertake independent reviews of refugee status assessments for offshore entry persons.
- (g) **'RRT Principal Contact'** means the person described in *Part B of Schedule 1*.
- (h) **'Offshore entry person'** means a person defined as an 'offshore entry person' under s.5 of the *Migration Act 1958*.
- (i) **'Personal information'** means personal information as defined in s.6 of the *Privacy Act 1988*.

(j) '**Refugees Convention**' means the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees.

(k) '**Specified personnel**' means the person or persons described in *Part D of Schedule 1*.

2. Scope of MOU

2.1 This MOU covers arrangements for the provision of Agreed Services by the RRT, the making of payments by DIAC and other obligations of each party.

2.2 DIAC and the MRT-RRT acknowledge that this MOU is solely for the purpose of facilitating the provision of and payment for Agreed Services.

3. Agreed Services provided by the RRT

3.1 The RRT must provide the Agreed Services in accordance with this MOU.

4. Fees and Costs

4.1 DIAC must pay:

(a) the fees specified in, or calculated in accordance with, *Part B of Schedule 2*; and

(b) any additional charges specified in *Part B of Schedule 2*;

to the MRT-RRT (the Migration Review Tribunal and Refugee Review Tribunal are prescribed as a single agency, the MRT-RRT, for the purposes of the *Financial Management and Accountability Act 1997*) in accordance with *Part D of Schedule 2*.

4.2 The MRT-RRT must submit to DIAC a tax invoice for payment in the manner specified in *Part E of Schedule 1*.

5. Entire Agreement and Variation

5.1 This MOU constitutes the entire agreement between the parties and supersedes all communications, arrangements and agreements, either oral or written between the parties with respect to the subject matter of

the MOU.

- 5.2 No agreement or understanding varying or extending this MOU, including the scope of the Agreed Services in *Part A of Schedule 1* is binding on either party unless in writing and signed by, or on behalf of, both parties.

6. Government Taxes, Duties and Charges

- 6.1 If any changes to a Government tax, duty or charge affect the costs associated with the provision of the Agreed Services, the parties to this MOU agree to vary the fees payable under this agreement to account for the value of the changes.

- 6.2 Despite clause 4.2 and *Part E of Schedule 1*, if the supply of the Agreed Services under this MOU results in Goods and Services Tax (as defined by the GST Law) being payable on the supply, the MRT-RRT undertakes to provide DIAC with tax invoices which comply with the requirements of the GST Law and in all other respects to assist DIAC to recoup any Input Tax Credits in respect of this MOU from the Australian Taxation Office.

7. Specified Personnel

- 7.1 The person or persons specified in *Part D of Schedule 1* will perform the Agreed Services in accordance with the terms of this MOU.

8. Disputes

- 8.1 Should a dispute arise regarding any part of this MOU that cannot be resolved in the first instance by the parties to the MOU, the parties will seek mediation of the dispute, using a mutually agreed mediator and sharing any associated costs equally.

9. Termination Policy

- 9.1 If this MOU is terminated before the completion of the Agreed Services, the MRT-RRT is entitled to recover from DIAC the fees payable in respect of the Agreed Services provided up to the date on which the termination of this MOU takes effect, together with any reasonable costs incurred by the MRT-RRT and directly attributable to the agreement under this MOU to provide the Agreed Services.

9.2 This agreement terminates:

- upon completion of all Agreed Services; or
- by written notice by DIAC, such termination taking effect from a specified date or the date on which the notice is received by the RRT; or
- by written notice by the RRT, such termination taking effect from a specified date or the date on which the notice is received by DIAC.

10. Communications between the RRT and DIAC

10.1 Communications between DIAC and the RRT for the purposes of this MOU will be between the RRT Principal Contact and DIAC Principal Contact.

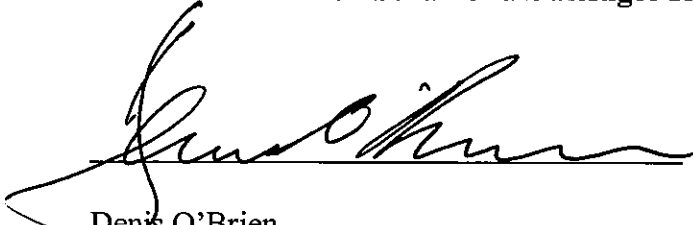
11. Confidentiality

11.1 The RRT will not release or share with any other person or organisation any personal information pertaining to the Agreed Services unless agreed by the parties to this MOU or unless disclosure is authorised or required to be made by law, or is requested by the ANAO, or is requested by a Minister or by a House or a Committee of the Parliament of the Commonwealth.

12. Ownership of Materials

12.1 The RRT retains the ownership of its materials used for the purposes of providing the Agreed Services and DIAC agrees not to use those materials for any other purpose without the written consent of the RRT.

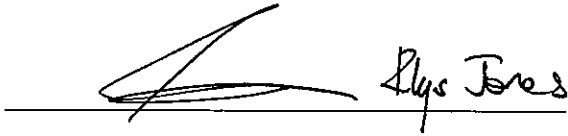
SIGNED for and on behalf of the Refugee Review Tribunal by:



Denis O'Brien
Principal Member

In the Presence of:

[WITNESS]

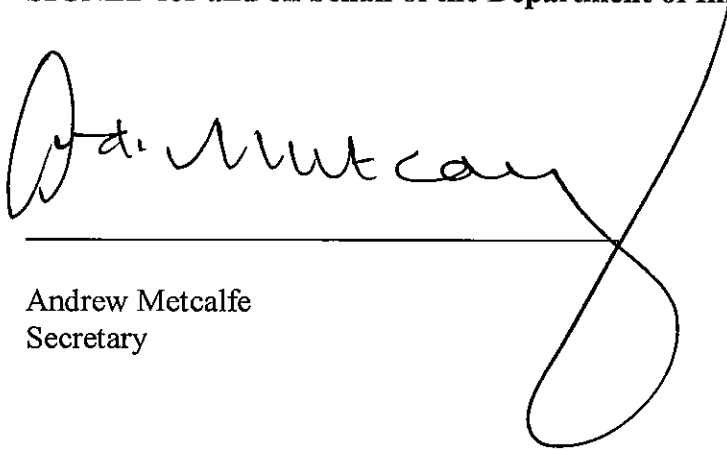


Elys Jones

DATE:

9 August 2010

SIGNED for and on behalf of the Department of Immigration and Citizenship by:



Andrew Metcalfe
Secretary

In the Presence of:

[WITNESS]



DATE:

6 August 2010

SCHEDULE 1 – REFUGEE REVIEW TRIBUNAL OBLIGATIONS

A. Description of Agreed Services

Under this Agreement, the RRT will provide, on request, certain services and support to Independent Merits Reviewers.

The RRT will provide the following services:

1. Legal Services

- Advice on the interpretation of the Refugees Convention; advice on administrative law; reviewing and commenting upon draft reviewer reports on reviews of refugee status assessments; and associated professional services.
- These services may include, but are not limited to, reviewing documents, research, provision of oral and written advice and reading materials.

2. Country Advice Services

- Advice on country information pertaining to the review of refugee status assessments in relation to offshore entry persons and associated professional services.
- These services may include, but are not limited to, providing country of origin information, access to information contained in the RRT country information databases and library, advice on country of origin issues in specific reviews, and reviewing and commenting upon draft reviewer reports on reviews of refugee status assessments.

3. Reporting

- The RRT will provide monthly reports on work undertaken under this Agreement to DIAC setting out the number of services provided, type of service, and to whom the services were provided.

B. RRT Principal Contact Details

The RRT Principal Contact, for the purposes of this MOU, is the person named below or any substitute notified in writing to DIAC by the RRT.

Rhys Jones
Acting Registrar
Telephone: (02) 9276 5063
Email: rhys.jones@mrt-rrt.gov.au

C. RRT Operational Contacts

The RRT Operational Contacts, for the purposes of requesting services under this MOU, are the persons named below or any substitute notified in writing to DIAC by the RRT.

Legal Services

Sobet Haddad
Director, Legal Services
Telephone: (02) 9276 5112
The email address for the purpose of requesting legal advice services is rsa.legal@mrt-rrt.gov.au.

Country Advice

Chris MacDonald
Director, Country Advice and Information
Telephone: (02) 9276 5111
The email address for the purposes of requesting country advice services is rsa.country@mrt-rrt.gov.au.

D. Specified Personnel

The specified personnel required to perform all or part of the Agreed Services for the purposes of this MOU, are:

- 1 for legal services, staff of the MRT-RRT Legal Services section at the classification of Senior Legal Officer and above; and
- 2 for country advice, staff of the MRT-RRT Country Advice Service at the classification of APS 6 and above.

E. Invoice Procedures

MRT-RRT will provide a tax invoice for services provided quarterly.

SCHEDULE 2 – DEPARTMENT OF IMMIGRATION AND CITIZENSHIP OBLIGATIONS

A. DIAC Principal Contact Details

The DIAC Principal Contact for the purposes of this MOU is the person named below or any substitute notified in writing to the RRT by DIAC.

John Lynch
Tel: 02-6264 3062
email: john.lynch@immi.gov.au

B. Fees and charges

1. The fees for delivering the Agreed Services in *Schedule 1* are:
 - \$436 per review case allocated to an Independent Merits Reviewer (exclusive of GST), where legal or country advice is sought from the RRT. Payment of the fee covers any further legal or country advice sought in relation to the same case.
 - \$436 per request for legal or country advice not linked to an identified case (exclusive of GST).
 - No additional charge will be incurred for administrative costs such as:
 - Photocopying / printing / imaging up to 3000 pages
 - All facsimile, email and telephone transactions
 - Mail and courier charges
 - Any additional charges incurred by the MRT-RRT in providing the services or additional services such as training and training materials will be invoiced as follows:
 - For goods and services provided by third parties, at cost
 - For services provided by MRT-RRT staff, at the rate of \$60 per hour.
2. Fees and charges are subject to annual review in December of each year.

C. Notification Arrangements

DIAC will:

- notify the RRT of persons engaged as an Independent Merits Reviewer as soon as possible after engagement;
- provide the RRT with any refugee status assessment guidelines provided to Independent Merits Reviewers;
- provide the RRT each month, for resource planning purposes with aggregate information about the number of cases available for allocation to an Independent Merits Reviewer, the country of reference in those cases and the general nature of claims for protection; and
- provide Independent Merits Reviewers with information about RRT services and how to access them;

D. Payment

DIAC will become liable for the fee payable at the time an Agreed Service is requested by an Independent Merits Reviewer.

DIAC is liable for fees calculated in accordance with this MOU for services of the nature of the Agreed Services provided to Independent Merits Reviewers.

Payment will be due 30 days from the date of a correctly rendered invoice.
