

61 2 99515986

**Australian Government****Migration Review Tribunal · Refugee Review Tribunal**

Mr Alistair Sands  
Australian Senate Select Committee on Ministerial Discretion in Migration Matters  
Parliament House  
CANBERRA ACT 2600

Dear Mr Sands

**Re Inquiry into Ministerial Discretion in Migration Matters**

I write to furnish information requested by the Committee on 22 October 2003 during the tribunals' evidence.

I have attached copies of the Migration Review Tribunal's (MRT) and the Refugee Review Tribunal's (RRT) constitution policies, Members' Codes of Conduct, complaints procedures, RRT Administrative Circular 02/02 'Reconstitution of Review', RRT Administrative Circular 02/03 'Member availability – Constitutions' and relevant provisions of the *Migration Act 1958* (the Act).

In relation to Senator Ludwig's query, which appears at page 9 of the transcript of the Proof Committee Hansard, as to whether the tribunals have ever received complaints on the basis of an alleged conflict of interest, I can advise that I am not aware of such complaints having been made. However, the RRT has from time to time received, from applicants of a particular ethnic background, objections regarding Members of the same ethnic background hearing their cases. These objections have been investigated and have been found to have had no substance.

In relation to Senator Wong's query regarding RRT file reference N01/137400 at page 12 of the transcript, Ms Leemen has subsequently confirmed that the correct RRT file reference number is N01/37400, (Departmental file reference number CLF2000/52917). I can advise that this request has been referred to the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) for response.

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In relation to Senator Wong's query regarding N96/10864 (Departmental file reference number A92/064891) which appears at page 25 of the transcript, the Tribunal's file is not available as it was destroyed along with other withdrawn applications earlier this year in accordance with normal disposal procedures for records of this kind. However, the Tribunal's electronic case management system records that the withdrawal of the applicant's review application was notified to the RRT by the Applicant on 28 March 1996. I have referred this matter to DIMIA for any additional information it may be able to provide to the Committee.

I trust this information is of assistance to the Committee.

Yours sincerely



Steve Karas  
Principal Member

13 November 2003



# Migration Review Tribunal

## ADMINISTRATIVE CIRCULAR 2/2000

[Date of Issue: 11 February 2000]

### TRIBUNAL CASEWORK PRIORITIES GUIDELINES AND PROCEDURES FOR CONSTITUTION

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## TRIBUNAL CASEWORK PRIORITIES GUIDELINES AND PROCEDURES FOR CONSTITUTION

The following guidelines and procedures apply until further notice. These guidelines are issued pursuant to Sections 353A, 354(3) and 397(3) of the *Migration Act 1958* ("the Act").

This Administrative Circular replaces all previous directions and instructions relating to the constitution and prioritisation of Tribunal cases.

### 1. **Constitution of the Tribunal** [TOC]

1.1 The Act requires the Tribunal to be "constituted" in respect of each application for review. The Tribunal can be constituted by 1, 2 or 3 members who become "the Tribunal" for the purposes of the review (s. 354(1)).

1.2 The Principal Member and Senior Members are empowered by Subsection 354 (2) to give a written direction about who is to constitute "the Tribunal" for the purposes of a review. The Principal Member may give Senior Members guidelines (s. 354 (3) refers) for the giving of directions about who is to constitute the Tribunal for the purpose of particular reviews. The approved form for such a written direction is MRT 18. Guidelines under Subsection 354 (3) are set out in this Administrative Circular.

1.3 Where two or three members are constituted to a case one member must be designated as the presiding member (s. 357(1)). If the Principal Member is constituted to a case the Principal Member must preside (s. 357(2)). Similarly a Senior Member constituted to a case must preside (s. 357(3)). Where neither the Principal Member nor a Senior Member is constituted to a multi member Tribunal, the Principal Member must designate one of the members to preside (s. 357(4)). Senior Members have been delegated to enable them to designate the presiding member in this situation. Issues are decided according to the majority of the members constituted. Where two members constitute the Tribunal, issues are to be decided by the presiding member if the members cannot agree.

1.4 Multi member Tribunals may be constituted in the following circumstances:

- to provide a member with the opportunity to work with a more experienced member,
- where a review involves complex legal issues,
- where a review has attracted (or is likely to attract) considerable public interest, or
- where it is considered advantageous to have more than one member constituted.

1.5 Senior Members in Melbourne and Sydney are to constitute cases to members based in Melbourne and Sydney respectively. I will constitute cases to part time members based in Canberra, Perth and Brisbane. In the absence of an Executive Member, another Executive Member may constitute cases other than for their registry. Form MRT 18 is to be used to record the constitution of a Tribunal - copies are available on MARTIE.

1.6 Cases remitted from the Federal Court involving applicants in Sydney or Melbourne will be allocated to Senior Members for constitution depending on the issues involved. Such cases should not be constituted to a member who has previously had involvement in the case except where:

- the findings of the court only relate to a failure to comply with Section 368, and
- the court does not order that the Tribunal be constituted by a member other than the member who made the original decision on the review.

1.7 "Time Limited" cases (bridging visa refusal or cancellation where as a result the person is in immigration detention) should be immediately referred by registry staff to the Senior Member responsible for the registry where the application is received (the Principal Member in the case of the ACT Registry). All other cases affecting someone in immigration detention should also be immediately referred for constitution.

1.8 Accurate records are to be kept when cases are transferred between registries. The registry receiving the case is responsible for notifying the applicant, DIMA and any other interested parties of the transfer.

1.9 Cases where case officers have already started to prepare the first examination and/or which have been constituted to members prior to the date of this Administrative Circular should continue to be processed. Any undertakings given to review applicants as to the processing of their application should be respected.

## 2. **Reconstitution of the Tribunal** [TOC]

2.1 The Tribunal can be reconstituted in the following circumstances:

- under Section 355, where the member or one of the constituted members in the case of multi member Tribunals:
  - stops being a member, or
  - for any reason, is not available for the purpose of the review at the place where the review is being conducted,the Principal Member shall direct another member or members to constitute the Tribunal for the purposes of finishing the review, or
- under Section 355A which allows the Principal Member to direct that the Tribunal constituted for the purpose of a particular review be reconstituted by either or both of the following:
  - adding one or more members to the Tribunal as previously constituted for the purpose of the review; or
  - removing one or more members from the Tribunal as so constituted,if the Principal Member thinks the reconstitution is in the interests of achieving the efficient conduct of the review in accordance with the objective set out in Subsection 353(1).

2.2 The Principal Member must, however, not give such a direction under Section 355A unless:

- the Tribunal's decision on the review has not been recorded in writing or given orally; and
- the Principal Member has consulted:
  - the member, or each member, who constitutes the Tribunal; and
  - a Senior Member who is not the member, or one of the members, who constitutes the Tribunal; and
  - either:
    - the Principal Member is satisfied that there is insufficient material before the Tribunal for the Tribunal to reach a decision on the review; or
    - a period equal to or longer than the prescribed period has elapsed since the Tribunal was constituted.

2.3 The prescribed period (r. 4.26) is:

- two months if the applicant at the time of constitution is in immigration detention other than due to the refusal or cancellation of a bridging visa at time of application for review, or
- three months if the applicant is not in immigration detention at time of constitution.

2.4 If a direction is given under Section 355A, the Tribunal as constituted in accordance with the direction is to continue and finish the review and may, for that purpose, have regard to any record of the proceedings of the review made by the Tribunal as previously constituted (s 355A(3)).

2.5 Section 355A allows the Principal Member to reconstitute the Tribunal in situations where he or she considers such action to be in the best interests of achieving the efficient conduct of the review in a way that is "fair, just, economical, informal and quick" (s. 353(1)). Examples of this include situations where the constituted member:

- advises that they have an actual or potential conflict of interest in respect of a case to which they have been constituted, or
- fails to decide a case within an acceptable time frame.

or, it is appropriate to vary the number of members constituted to a case.

2.6 Note that the prescribed periods in regulation 4.26 do not apply where the Principal Member is satisfied that the constituted member has insufficient material before them to reach a decision.

2.7 Senior Members have been delegated to reconstitute cases under Section 355 but not Section 355A. Form MRT 22 is to be used. Members who are unavailable are required to state the reasons for their unavailability and all documents relating to the reconstitution are to be placed on the relevant case file.

2.8 If Senior Members are of the view that reconstitution under Section 355A is appropriate, they should put a recommendation to me setting out why they think it appropriate for me to exercise my powers under Section 355A. All documents are to be placed on the relevant case file.

### 3. ***Constitutions by the Principal Member*** [TOC]

3.1 Cases are only to be constituted by the Principal Member where:

- the decision under review was made by the Minister personally,
- the Tribunal is to be "reconstituted" as a result of a member having a conflict of interest,
- a member from another registry is to be constituted, whether alone or with other members, as the Tribunal. Senior Members may, however, constitute members from another registry where specific advice has been received from the Principal Member to that effect, or
- two Senior Members are to be constituted as the Tribunal

3.2 Files for cases where the Tribunal can only be constituted or re-constituted by the Principal Member should be forwarded to the Principal Member with a request that the Tribunal be constituted or reconstituted.

#### 4. **Discussion with Principal Member prior to constitution** [TOC]

4.1 Senior Members should discuss the following cases with the Principal Member prior to constitution:

- Difficult or complex cases,
- Cases involving a prominent community member or which are particularly sensitive due to the subject matter or the people involved in the case, and
- Cases which can be characterised as "test cases" or likely to produce "leading decisions" by the Tribunal.

4.2 When a case is identified as involving a prominent community member or as being particularly sensitive, the case should be immediately referred to the Deputy Registrar who will in turn refer the case to the Senior Member (or the Principal Member if identified within the ACT Registry). Every necessary step should be taken to ensure that such cases are treated strictly "in confidence" with access to any relevant documentation limited to the constituted member(s) and the case officer. Information about such cases should only be conveyed to other persons within the Tribunal on a strict need to know basis.

#### 5. **MRT Caseload Priorities** [TOC]

5.1 Section 353 of the Act requires the Tribunal, in carrying out its functions under the Act, to pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick. Within this context, when selecting cases for allocation to case officers and constitution to members, the following caseload priorities are to be applied. These priorities have been arrived at taking into account the legal framework within which the Tribunal operates and the Minister's expressed preferences for the order in which the Tribunal should process its caseload.

5.2 The Tribunal's casework priorities from the date of this Administrative Circular are to be as follows:

- Priority 1.
  - Time critical cases as defined by legislation and applications from any person in immigration detention, and
  - Cases to be expedited in accordance with legislation, including onshore visa cancellation cases.
- Priority 2.
  - Cases where there are special circumstances of a compelling or compassionate nature relating to the review applicant or the visa applicant, and
  - Federal Court remittals.
- Priority 3.
  - Applications for the review of decisions to refuse a visa where the review applicant is also the visa applicant by date of lodgement of undecided review application (review of onshore visa decisions), and
  - offshore spouse applications lodged prior to a date advised by the Principal Member from time to time.

- Priority 4
  - All other cases by date of lodgement of undecided review application (review of offshore visa decisions) other than offshore spouse cases included in priority group 3.

5.3 Within Priorities 3 and 4, cases will be dealt with on the basis of "oldest review application first". There is however scope for cases within a priority grouping to be constituted taking into account the characteristics of cases where this will achieve economies of effort through dealing with a number of similar cases at the same time or to make the best use of the skills and knowledge of members and case officers.

5.4 "Oldest review application" is to be worked out based on the date that the review applicant first applied for merit review:

- if the case has been transferred from MIRO - the date of the undecided application for review by MIRO,
- if the case has been transferred from the IRT - the date of the undecided application for review by the IRT, or
- if the application for review was lodged with the MRT, the date lodged with the MRT.

5.5 The following further defines the Tribunal's caseload priorities and sets out the parameters for the management of the MRT caseload.

5.6 Reference to "spouse" in this administrative circular also includes equivalent "interdependency" cases.

## 6. **Priority 1 [TOC]**

- **Time limited cases as defined by legislation**
- **Cases to be expedited in accordance with legislation, including onshore visa cancellation cases**
- **Applications for review where a person affected by the decision under review is held in immigration detention.**

6.1 Priority 1 relates to the review of decisions that the legislation requires be given priority by the Tribunal.

- ***Time Limited Cases - Review of decisions to refuse or cancel a bridging visa as a result of which the review applicant is in immigration detention.***

6.2 Section 367 provides:

- (1) *Subject to subsection (2), if the application is for review of an MRT-reviewable decision covered by subsection 338(4), the Tribunal must make its decision on review, and notify the applicant of the decision, within the prescribed period.*
- (2) *The Tribunal may, with the agreement of the applicant, extend the period in subsection (1) for the purposes of a particular application.*

6.3 The period prescribed (in regulation 4.27) is seven working days from the date of receipt of the application by the Tribunal.

6.4 Section 338 (4) refers to:

- a) *a decision to refuse to grant a bridging visa to a non-citizen who is in immigration detention because of that refusal;*
- b) *a decision to cancel a bridging visa held by a non-citizen who is in immigration detention because of that cancellation*



6.5 The Tribunal is to continue to make every effort to ensure that these cases are decided within the prescribed period.

- **Cases to be expedited in accordance with legislation, including onshore visa cancellation cases.**

6.6 The regulations provide for certain types of review applications to be expedited, ie they are to be dealt with ahead of other review applications. These are set out in regulations 4.23, 4.24 and 4.25:

**Regulation 4.23. Expedited review (close family visit visas)**

4.23. (1) This regulation applies to review of a decision to refuse to grant a Long Stay (Visitor) (Class TN) or Short Stay (Visitor) (Class TR) visa if and only if:

- the applicant stated in his or her application that he or she intended to visit Australia, or remain in Australia as a visitor, for the purposes of visiting an Australian citizen or an Australian permanent resident who is a parent, spouse, child, brother or sister of the applicant; and
- that application was made to allow the applicant to participate in an event of special family significance in which he or she is directly concerned; and
- the applicant identified the event and the applicant's concern in that application; and
- that application was refused because either:
  - the Minister was not satisfied that the expressed intention of the applicant only to visit Australia was genuine; or
  - the applicant did not satisfy public interest criterion 4011; and
- the application was made long enough before the event to allow for review by the Tribunal if the application were refused.

[Subregulation 4.23(2) was omitted by Statutory Rules 1999, No. 68]

(3) The decision must be reviewed immediately by the Tribunal on receipt of an application for review of the decision.

(4) A review authority must give notice to the applicant of its decision in respect of an application for review as soon as practicable.

**Regulation 4.24. Expedited review (decisions to cancel visas)**

(1) A decision to cancel a visa (other than a decision of a kind referred to in subSection 338(4) of the Act) must be reviewed immediately by the Tribunal on receipt by it of an application for review of the decision.

(2) The Tribunal must give notice of its decision in respect of an application for review to the applicant as soon as practicable.

**Regulation 4.25. Expedited review (certain applicants in immigration detention)**

(1) If:
 

- a decision is made to refuse a substantive visa; and
- the person who applied for the visa is in immigration detention when the review application is made;

 the Tribunal must review the decision immediately on receipt of the application.

(2) The Tribunal must give notice of its decision in respect of an application for review to the applicant as soon as practicable.

- **Applications for review where a person affected by the decision under review is held in**

### ***immigration detention***

6.7 All cases where a person affected by the decision under review is being held in immigration detention (including those not included in the legislative provisions quoted above) must be given priority over other Tribunal cases (s. 397(4) refers).

6.8 While abbreviated time frames are prescribed in respect of time limited cases as defined in Subsection 338(4), similar time frames are not prescribed for other detention related cases. Every effort must therefore be made to ensure that all cases affecting persons in detention are decided as quickly as possible. It is not possible to reduce the prescribed periods in respect of immigration detention cases that fall outside of the definition in Subsection 338(4). It should however be made clear to applicants in detention that early responses to invitations under Sections 359 and 359A will allow the Tribunal to deal with their application more quickly.

## **7. *Priority 2* [TOC]**

- **Cases where there are special circumstances of a compelling or compassionate nature for the review and/or visa applicant.**
- **Federal Court remittals**

• ***Cases where there are special circumstances of a compelling or compassionate nature for the review and/or visa applicant.***

7.1 Given the number of cases on hand, it is to be expected that there will be a significant number of requests to expedite applications for review. However cases should not be given priority over similar cases unless there are special circumstances of a compelling or compassionate nature over and above the norm for the type of decision to be reviewed.

7.2 Requests for priority should be considered in the light of the circumstances of similar cases. They should be referred in the first instance to the Deputy Registrar or officer nominated by the Deputy Registrar for consideration as to whether the case should be given priority. As the statutory office holders with the authority to constitute cases to members, the Principal Member (for ACT Registry cases) and Senior Members in other registries, are to be given the opportunity to decide whether a case should be given priority in accordance with the procedures agreed to within each registry.

7.3 Applications for review where a child is separated from their natural parent as a result of the decision to be reviewed should generally be treated as falling within this priority.

• ***Federal Court remittals***

7.4 It is important that when the Federal Court remits a case back to the Tribunal it be dealt with expeditiously. When advice is received from DIMA that a case has been remitted back from the Federal Court, the Principal Member will be consulted by Decision Support as to how the Tribunal should be constituted. The Principal Member will either constitute the case to a member (in consultation with the relevant Senior Member) or refer the case to a Senior Member for constitution.

7.5 Arrangements are to be implemented to ensure that progress with finalising remitted cases is closely monitored.

## **8. *Priority 3* [TOC]**

- **Applications for review of decisions to refuse a visa where the review applicant is also the visa applicant by date of lodgement of undecided review application (review of onshore visa decisions), and**
- **Offshore spouse applications lodged prior to a date advised by the Principal Member from time to time.**

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8.1 Onshore cases are to be given priority over offshore cases (other than the identified offshore spouse cases) in order to minimise the incentive for persons to seek review with the view to delaying their departure from Australia, particularly where there is little chance of success.

8.2 Included in this priority are all visa refusal cases where the applicant was onshore at time of original visa application and was onshore at the time of decision.

8.3 Included in this priority grouping will be cases (other than cases included in higher priorities) where the decision turns on an objective criterion that the applicant clearly does not appear to meet and the applicant is likely to benefit from lengthy processing times. An example would be where an applicant had to satisfy a Schedule 3 requirement not to be unlawful for more than twelve months at time of application. If such cases are identified, they should be constituted ahead of other cases within this priority grouping.

8.4 Where onshore business visa refusals have an associated application relating to a business sponsorship, they should be dealt with at the same time.

8.5 This priority grouping would include the following visa subclasses (this list is not to be seen as comprehensive - refer to the regulations to determine whether other visa sub-classes fall within this priority grouping):

- bridging visas (other than those included in priority 1 due to applicant being in immigration detention)
- visitor visas (subclasses 661 to 686) - if applied for and refused while visa applicant onshore
- spouse and interdependency visas refused while visa applicant onshore (subclasses 801, 820, 814, 826, 831, 100, 110) and offshore spouse/interdependency cases lodged prior to the date specified by the Principal Member from time to time.
- other family (subclasses 802, 804, 805, 806, 819, 831, 835, 859).
- permanent business visas (subclasses 840 to 846) and related sponsorship/nomination.
- temporary business visas (subclasses 456, 457) and related sponsorships - if applied for and refused while applicant onshore.
- all other onshore visa applications.

## 9. **Priority 4 [TOC]**

- **All other cases including new MRT cases and former IRT and MIRO cases by date of lodgement of review application (review of decisions to refuse a visa offshore).**

9.1 Offshore visa refusal cases (and any related business sponsorship) should not be processed unless they fall within Priorities 1, 2 or 3 until such time as all higher priority cases have been allocated to a case officer and/or constituted to a member.

9.2 This priority grouping would include to the following visa subclasses (this list is not to be seen as comprehensive - refer to the regulations to determine whether other visa sub-classes fall within this priority grouping):

- visitor visas (subclasses 661 to 686) - if applied for and refused while visa applicant offshore (unless included in priority 1)
- spouse and interdependency visas refused while visa applicant offshore (subclasses 100, 110, 300)
- other family (subclasses 101 - 104, 114 - 118 )
- permanent business visas (subclasses 120 - 121, 127 - 135) and related sponsorship/nomination
- temporary business visas (subclasses 456, 457) and related sponsorships - if applied for and refused while applicant offshore.

- all other offshore visa subclasses in respect of which there is a right of merit review by the Tribunal.

## 10. **Monitoring and reporting on the management of case priorities** [TOC]

10.1 It is important that that information be available about how well the Tribunal is managing its caseload and to report on how the Tribunal is performing in respect of the management of each priority group.

10.2 It is planned that case priorities will be identified on the MRT CMS as follows:

- Priority 1 (as required by legislation) – the existing CMS priority (time standard codes): TL for time-limited cases, ER (expedited review) for all other priority one cases
- Priority 2 (remittals and priority granted) – a new CMS priority (time standard) code is to be used ie PR (priority)
- Priority 3 (onshore and older spouse cases) The existing CMS priority (time-standard) codes S1 (stream 1), S2 (stream 2) and S3 (stream 3) in conjunction with the "overseas indicator" (decisions screen), and for older offshore spouse cases, the review lodgement date (application lodged date for IRT and MRT lodgement date or fee paid/waived date for MIRO transfers) and visa subclass.
- Priority 4 (offshore cases) – All cases with CMS priority (time-standard) codes S1, S2 or S3 that are not Priority 3 cases.

(signed)  
Susanne Tongue  
Principal Member  
11 February 2000

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**MRT**

# Migration Review Tribunal

## MEMBER CODE OF CONDUCT

### 1. INTRODUCTORY

This document establishes a code of conduct (the Code) to be followed by all members of the Tribunal in performing their functions and duties. It is the document referred to in the **Member Performance Agreement** which, all selected applicants for appointment as a member of the Tribunal will be required to enter into prior to their formal appointment.

The purpose of the Code is to inform and advise members of the expectations of the Principal Member in relation to their performance, standards of behaviour and general conduct. The Code presupposes that members will act according to law in the performance of their duties and is designed to ensure that the independence of members in relation to their decision-making functions is not compromised in any way.

The Code elaborates on the obligations of members to:

- observe standards of justice and fairness in dealing with persons before the Tribunal;
- protect the Tribunal's reputation in the wider community; and
- act appropriately when a conflict arises between a member's private interest and their duty to the Tribunal.

At least once each year, at a time to be decided by the Principal Member, the performance of members will be the subject of written assessment by the Principal Member and/or a Senior Member. The assessment process will include an interview. Assessment will be in terms of the Code of Conduct and the evaluation criteria listed in an appraisal form approved by the Principal Member. Members will be entitled to a copy of the assessment and an opportunity to comment thereon in writing.

Assessments will form part of members' personnel files, which will be available to the Principal Member for general management purposes. They will also be taken into account by the Principal Member in the event the member seeks re-appointment at the expiry of his or her term.

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If an assessment is performed by a Senior Member, and the subject member is aggrieved by the result, he or she will be entitled to have the assessment reviewed by the Principal Member whose decision will be final.

## 2. CORPORATE RESPONSIBILITIES

Members are expected to contribute to the effective administration of the Tribunal by participation in its various committees and working parties and by assisting to implement and promote its corporate and strategic goals and objectives. In particular, members are expected –

### 2.1 Responsibility to the Principal Member

- a) To maintain effective links with the Principal Member;
- b) To comply with all lawful directions of the Principal Member and, in particular, directions given by way of Tribunal policy and procedures;
- c) To advise the Principal Member of all affiliations with persons or organisations which have the potential for causing conflict of interest or for adversely affecting the reputation of the Tribunal and to accept and act upon advice given by the Principal Member in relation to continuation of the affiliations;
- d) To provide the Principal Member with their private addresses and telephone numbers for necessary official after hours contact and to authorise the Principal Member to make such information available to senior management personnel where necessary.

### 2.2 Propriety

- a) To behave with propriety and discretion especially in public places where they are identifiable as members;
- b) Refrain from engaging in any activities, and from expressing opinions, which could cast doubt upon their integrity and their capacity to act impartially;
- c) Not to accept or solicit gifts of any kind where the offer is related to or could reasonably be perceived as being related to the office of Member of the Tribunal. (Where a gift is received by post or other means, the Registrar/Deputy Registrar must be advised of the circumstances under which it was received);
- d) Except with the specific consent of the Principal Member, not to engage in public debate or make public statement on matters related to visa immigration or refugee policy or on matters related to the affairs of the Tribunal.
- e) To be aware of and comply with the conflict of interest provisions of s.402 of the *Migration Act 1958*, disclose any conflict of interest to the Principal Member or a Senior Member and bring to the attention of the Principal Member or a Senior Member any possible conflict of interest involving a colleague of which they become aware;

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- f) To be aware of and sensitive to cultural and special needs issues (e.g. gender, physical or intellectual handicap, age, sexual preference, etc.);
- g) To ensure the confidentiality of all sensitive information which comes to attention generally as a result of membership of the Tribunal;
- h) To be aware of and take all reasonable measures to ensure compliance with the confidentiality provisions of the *Migration Act 1958*, the *Freedom of Information Act* and the *Privacy Act*;
- i) To be aware of possible perceptions of bias if they meet privately with migration agents or departmental officers and to behave appropriately;
- j) To recognise that notification of Tribunal decisions will be by the public handing down of decisions or by oral decisions;
- k) To dress appropriately at all times; and
- l) To refrain from using Tribunal stationery for personal purposes.

### **2.3 Performance**

- a) To monitor and oversight their work performance against standards issued by the Principal Member;
- b) To contribute to planning processes, which are outcome and results, oriented.

### **2.4 Relationships**

- a) To treat other members, members of staff, applicants, interpreters, advisers, witnesses and any other persons having business with the Tribunal with courtesy and respect and to ensure their dignity;
- b) To participate in the collegiate life of the Tribunal by attending and contributing to regular training sessions, conferences and informal discussion groups.

### **2.5 Attendance and Absences (Full-time members)**

- a) Except where on approved leave or necessarily absent as a result of unforeseen circumstances, to attend Tribunal premises for duty during normal business hours unless elsewhere with the specific prior consent of the Principal Member or Senior Member (in this context, Tribunal premises includes circuit venues, authorised seminar premises and the like);
- b) Where specific written consent has been given for an alternative work place, to advise his/her case management team leader on each permitted occasion and provide a contact telephone number.
- c) To seek approval for leave as far in advance as possible in order to minimise interruption to the work of the Tribunal and to enable personnel to process entitlements. (In any event, approval for leave in non-urgent cases, including applications for recreation leave, to be sought at least two weeks prior to the date of the intended leave and members to provide contact details where leave is approved);



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- d) In the case of illness or other unforeseen absence, to notify the Principal Member or a Senior Member of absence at the earliest opportunity and, upon return to work, submit a leave application for approval;
- e) To maintain a diary of attendance available for inspection by the Principal Member or a Senior Member.

## **2.6 Attendance and Absences (Part-time members)**

- a) To attend the Tribunal during normal business hours on days agreed with the Principal Member or a Senior Member, unless alternative arrangements have been agreed with the Principal Member or a Senior Member; and
- b) To discuss with the Principal Member or a Senior Member any deviation from usual days of attendance at the Tribunal, and the reason for the deviation, as far in advance as possible to minimise disruption to the work of the Tribunal.

## **2.7 Professional development**

- a) To maintain effective links with the Principal Member, fellow members, senior management and staff generally;
- b) To deliver high standard oral presentations, when requested by the Principal Member, to both internal and external audiences and to participate in the community information program with the Principal Member's agreement;
- c) As directed, to attend, at Tribunal expense, selected external conferences, seminars and training sessions dealing with issues of relevance to members' duties;
- d) To contribute to the continuous improvement process;
- e) To contribute to the design, implementation and maintenance of initiatives and projects;
- f) To display and foster a sound understanding of the organisation's wider responsibilities and corporate role;
- g) To communicate and project corporate values and strategic directions to other members and staff;
- h) Upon the request of the Principal Member or a Senior Member, to act as a mentor to new and inexperienced members.

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### 3. RELATIONS WITH ADMINISTRATIVE STAFF

The objectives of the Tribunal are corporate in nature and their successful attainment is dependent upon teamwork and co-operation. Members are referred to and must familiarise themselves with this code of conduct as it applies to members and MRT administrative staff.

Administrative staff are appointed or employed under *the Public Service Act 1999*. They take their instructions from and are accountable to their registry supervisors and through them to the Registrar and, ultimately, the Principal Member as chief executive officer of the organisation. Tribunal staff are not responsible or accountable to members other than the Principal Member and his or her delegates. They do, however, have an obligation to co-operate with and facilitate the work of members in pursuance of corporate goals. This means that, when requested by a member, staff must perform all tasks associated with the conduct of the member's case unless those tasks do not accord with agreed Registry practice, Tribunal policy and procedures.

In their relations with administrative staff, members must –

- a) Be courteous and helpful;
- b) Refrain from giving directions to staff, which are contrary to, accepted registry practice or which conflict with directions given by staff supervisors. (In such situations, if informal discussions with the supervisor do not resolve the issue, the member should take the matter up with a Deputy Registrar, the Registrar or an executive member);
- c) Refrain from unlawful and inappropriate practices including, for example, sexual harassment and creating a hostile work environment; and
- d) Where difficulties arise, be prepared to participate in a conflict resolution process.

### 4. THE REVIEW PROCESS

#### 4.1 *Productivity, quality and consistency*

Members are required to produce at least the target number of written review decisions for each financial year as set by the Principal Member. Such decisions must be consistent with other Tribunal decisions of a like nature and of a quality acceptable to the Principal Member.

#### 4.2 *Timelines and work practices*

Members are required to deal with their caseload in accordance with administrative directions concerning timelines for the various stages of the review process and specified work practices.

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#### ***4.3 Priorities***

Members are required to deal with their caseload in accordance with directions concerning the levels of priority to be accorded to particular kinds of cases.

#### ***4.4 Efficient work practices***

Members are required to manage a multiple case load in an orderly and efficient manner. They are expected to adopt efficient work practices, which will enhance their ability to produce the optimum number of decisions consistent with standards of quality and consistency.

#### ***4.5 Communications with applicants***

All case specific communications between members and applicants or their advisers must be:

- a) In writing with the original or a copy on file and folioed; or
- b) Made during recorded hearings; or
- c) Made in the presence of a staff member and a minute thereof filed and folioed; or
- d) In accordance with directions.

#### ***4.6 Hearings***

- a) Conduct hearings in accordance with the Tribunal's non-adversarial procedures and in accordance with the legislation;
- b) Avoid bias or the appearance of bias;
- c) Comply with procedural fairness requirements;
- d) Be available for circuit hearings as required;
- e) Initiate hearings by telephone or video conference, and be available and willing to conduct such hearings when directed by the Principal Member or Senior Member;
- f) Avoid unnecessary delays and cancellations of hearings;
- g) Commence hearings at the time advised to applicants;
- h) Use accepted and appropriate interviewing techniques and avoid unnecessarily intrusive questions;
- i) Use interpreters as required;
- j) Use interpreters effectively and in accordance with accepted techniques;
- k) Conduct hearings expeditiously and effectively and discourage irrelevancy, repetition and obfuscation; and
- l) Deal sensitively with applicants' needs, culture and background.

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#### ***4.7 Decisions***

Members are expected to write good quality decisions and to finalise these decisions as soon as practicable after hearing. The decisions must be concise, easy to understand, and contain a minimum of "legalese". They should not contain immoderate or unnecessary criticism of the actions of others. They must accord with the Migration Act, procedural fairness and other legal requirements.

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## RRT CONSTITUTION POLICY 2003/2004

### Background

The Principal Member is responsible for all matters to do with the constitution, deconstitution and reconstitution of cases to Members. This function is substantially delegated to the Deputy Principal Member, who *inter alia* monitors the caseload and develops strategies for constitution of cases to ensure that they are effectively handled. For the Melbourne caseload, this function is carried out in consultation with the Senior Member.

The constitutions/caseload policy is set in April each year after consultation with Members and the new allocations strategy normally commences at the beginning of May, so as to more or less flow through to finalisations from July onwards.

Ongoing applications and cases at hand are analyzed in terms of country composition and numbers, and countries are broadly classified as hard/complex, less complex and easier. Within the overall full-time Member target, each Member is expected to undertake set numbers of cases from each category, as well as a certain number of priority cases (in the past largely detention cases). Each Member has also been expected to do a certain number of cases from a particular country of which there were a large number of cases. These proportions of different categories are uniform for all full-time Members (and applied pro rata to part-time Members), although Members are able to express preferences for particular countries within each category.

Members are expected to undertake cases from a variety of countries. The constitutions policy ensures that all Members undertake roughly equivalent caseloads, notwithstanding the inherent variability of individual cases.

### 2003/2004

The caseload numbers refer to constitutions over the twelve months from 1 May 2003. It is assumed that these will roughly correspond to finalisations for the financial year from 1 July 2003.

The underlying approach of the present constitutions policy has not been substantially altered.

In looking at what is necessary and achievable for the Tribunal as a whole, factors taken into account include the financial implications for the Tribunal; the need to provide further significant inroads into the backlog over the financial year (a priority for the Minister and the Tribunal); the number of Members actually available over the year; the nature of the caseload; and the capacity of Members to make particular numbers of decisions.

Particular factors relevant to the impact on Members of any particular numerical target for the forthcoming year include the composition of priority cases, including the continuing decline in detention cases; a shift within the Sydney caseload from relatively harder

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countries to relatively less complex countries; and the impact of counting post-constitution withdrawals towards an individual Member's target.

The individual target for Members has declined in recent years, in Sydney from 139 in 1998/1999 to 130 in 2000/2001, and 125 in 2001/2002 and 2002/2003.

There is a differential figure for Melbourne based on the Tribunal's analysis of the caseload in that registry. The smaller Member base in Melbourne has also meant that efficiencies from country specialization are less available than in Sydney. These factors continue to support a lower target in the Melbourne registry.

For 2003/2004, the existing individual target of 125 cases for a full-time Member in Sydney and 115 cases for a full-time Member in Melbourne will be maintained.

Senior Members will continue to undertake a caseload 2/3 of the normal caseload (to allow for their additional responsibilities), while the Deputy Principal Member will undertake 1/3 of a full-time Member's caseload. These will include precedential cases as they arise, especially involving new legal or country situations. The Principal Member has no specific target.

The Tribunal recognises that more experienced long-serving Members are often able to reach (and in some cases substantially exceed) the target more readily than newer Members. To reflect the Tribunal's appreciation of the additional decisions made by some Members, where a Member has taken his/her full constitutions for the year across categories (and has reached at least *pro rata* target) a flexible approach will be adopted to the composition of further constitutions to that Member during the allocations period.

The caseload will continue to be categorised into complex, less complex, and easier countries, and priority/other cases. Relevant considerations in the final allocation of countries to Members will include their expressed preferences, past experience in doing particular countries, the achievement of adequate cover of all the countries in the category group, and equity in the overall caseload for each Member.

So long as Members undertake the required number of cases from each category there will be flexibility in the number of countries they are required to nominate to achieve this. However, the diminishing backlog means that for some countries, at any particular time there may be a shortage of cases on hand to constitute (we have already seen this to a limited extent in recent months). Members might therefore wish to be cautious about locking themselves into too few countries.

Last year's expectation that there would be a considerable drop-off in the number of detention cases proved well-founded. This has been a continuing trend, which has eased some of the pressures on the caseloads arising from the significant proportion of cases needing to be finalised within 70 days that was formerly experienced.

In both Melbourne and Sydney, old cases from non-core countries will continue to be periodically offered as priority cases. While priority constitution of East Timorese cases will tail off, it is anticipated that by the end of the current financial year we will start to receive a flow of former TPV holders seeking review of decisions not to renew their

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temporary visas. These will receive priority constitution. It is envisaged that the DPM and Senior Members (perhaps together with some other more experienced Members) might undertake early (precedential) TPV cases before they flow on to Members more generally.

The existing policy will continue, where cases identified prior to constitution as 'departed Australia', 'withdrawal' or out of time (invalidity) will be identified separately for finalisation by the PM, with the assistance of Executive Support. They will not be allocated to the DPM or Senior Members, nor credited as decisions for the purpose of any individual's finalisation targets. However, any cases constituted to Members which are subsequently finalised as 'departed Australia', 'withdrawal' or out of time (invalidity) will count toward individual Member's targets.

## SYDNEY REGISTRY

### Priority / other

In 2003/2004, this category will remain at 25 cases per full-time Member. This will include detention cases and other priorities such as court remittals and ASA hardship cases. It will also encompass minors, residual family applicants, and requests to expedite on humanitarian grounds, the so-called "exotica" and any remaining East Timorese. Applications from former TPV holders will also be constituted in this category.

### India

India will continue to be a mandatory country for Members in 2003/2004, but with an allocation to each Member of just 10 India cases. A Member may elect to take 10 cases from a complex country of their choice to substitute for their quota of 10 India cases. In addition, a Member may request an additional allocation of Indian cases, substituting for part of their allocation of complex cases.

### Complex countries

Taking into account shifts in the numbers of cases in Sydney away from the more complex countries and towards the less complex category, the number of cases required to be taken from designated complex countries can be reduced very significantly from 40 per person to 25.

Changing numbers also make possible slightly different choices in this category and the designated countries in this category for 2003/2004 are:

Bangladesh  
Russia  
Ukraine  
Sri Lanka,  
Colombia,  
Lebanon  
Nepal  
Mongolia

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Although we would like to avoid requiring Members to take new complex countries and, overall, to continue to allow Members to take relatively few different countries if they wish (and Member's preferences will be accommodated as far as possible), the extent to which this is possible depends on the way individual Member preferences play out and the number of cases requiring disposal.

#### Less Complex

The numbers of cases for Indonesia and PRC have held up solidly, and it has been possible to increase the number of less complex cases to 45 in 2003/2004.

Designated countries in this category are:

PRC  
Indonesia  
Pakistan  
Peru

#### Easier

The balance of cases has allowed an allocation of 20 cases per Member from easier countries to be retained. The designated countries are:

Fiji  
Philippines  
Thailand  
Malaysia  
Tonga  
South Korea  
Vietnam

#### Overall Allocation

The overall shape of the constitution strategy for a full time Member in Sydney is therefore as follows:

	2002/2003	2003/2004
India	10	10
Complex	40	25
Less Complex	30	45
Easier	20	20
Priority/other	25	25
<b>Total</b>	<b>125</b>	<b>125</b>

*NB* based on withdrawals figures over the past two years, we would expect that on average each Sydney Member's case allocations might include 4 withdrawals.



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## MELBOURNE REGISTRY

### Priority / other

In 2003/2004, this category will be reduced slightly to 35 cases per full-time Member. This will include detention cases and other priorities such as court remittals and ASA hardship cases. It will also encompass minors, residual family applicants, and requests to expedite on humanitarian grounds, the so-called "exotica" and East Timorese. Applications from former TPV holders will also be constituted in this category. In 2003/2004, further East Timor cases will be allocated under the "priority" category rather than "less complex" (reflecting the fact that they are in practise constituted as a priority). We also have to make provisions for a significant number of TPVs expected to flow by June this year.

### Sri Lanka

There remain substantial numbers of unallocated cases, while new applications have continued at a steady rate. Sri Lanka will therefore be retained as a separate category for all Members, at the present rate of 15 per Member.

### Complex Countries

In Melbourne, the unallocated and application figures indicate that the requirement for the complex countries remains unchanged and the "complex" target therefore remains at 20 cases per full-time Member. However, on the basis of an absence of new applications in 2002, Uzbekistan and Yugoslavia can be removed from the complex "key" countries. The countries now are:

- Albania
- Bangladesh
- Burma
- Colombia
- Ethiopia
- Iran
- Lebanon
- Nigeria
- Pakistan
- Russia
- Turkey
- Ukraine

### Less Complex

The numbers of cases for the PRC and India have increased substantially, so that even with the transfer of East Timor cases to the "priority" category there remain a large number of cases, leading to an increase to 30 from last year's figure of 25 cases. The countries are:

- PRC
- India
- Indonesia
- Romania
- FYROM

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Easier

Numbers of these cases remain relatively low, so that it is only with difficulty that the existing allocation of 15 per Member can be maintained. The designated countries are:

Fiji  
 Vietnam  
 Philippines  
 Thailand  
 Cambodia  
 Malaysia

Overall Allocation

The overall shape of the constitution strategy for a full time Member in Melbourne is therefore as follows:

	2002/2003	2003/2004
Sri Lanka	15	15
Complex	20	20
Less Complex	25	30
Easier	15	15
Priority/other	40	35
<b>Total</b>	<b>115</b>	<b>115</b>

*NB* based on withdrawals figures over the past two years, we would expect that on average each Melbourne Member's case allocations might result in excess of 4 withdrawals.

Contingent Issues

The foregoing represents an effort to come to terms with the expected caseload before the Tribunal in 2003/2004. Of course, it is not possible, in planning for any constitution year, to foresee all of the caseload issues that will arise. In this particular year, there are a number of imponderables that may come to impact on the strategy. Those issues are, most notably, relative changes in application rates between countries, the treatment of TPV holders, possible remittals arising from class action applicants, and the consequences of changed external refugee flows.

Although there should be sufficient flexibility in the proposed constitution policy to deal with these issues, we will need to be watchful and be ready to react flexibly, if necessary. This may mean, from time to time, that Members will have to undertake new countries, sometimes at short notice. Progressive reductions in the numbers of unconstituted cases at hand (the 'backlog') may also lead to less flexibility in constitutions at particular times.

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## **Caseload Management**

Members are encouraged to take responsibility for the pro-active management of their own personal caseload within the parameters set (subject to ongoing monitoring to ensure that individual Members do not drift into difficulties). There will be no unilateral constitutions of new non-priority cases. Obviously, the size and composition of constitution batches early in the new constitutions period should take account of cases already held by Members. Members in Sydney should direct their requests for cases to the constitutions manager, Peter Curran, and in Melbourne to Claire Davenport.

Senior Members will be happy to discuss with any interested Members strategies and mechanisms to pro-actively manage personal caseloads and to assist with any other practical issues which may arise.

Most Members have found it to be an effective strategy to take small, regular batches of constitutions, which reflect the overall mix of cases (rather than sustained constitutions of either hard or easy cases).

The existing practice of Members informing the Senior Member, when and how many non priority cases they wish to have constituted to them and consultation as to the mix of cases in a batch, will continue for the constitution of new cases in Melbourne.

It is strongly suggested that Members do not put off taking constitutions of what are perceived to be "harder" cases as this unflinching leads to serious difficulties later in the year.

Notwithstanding the unavoidable importance of numbers, the Tribunal retains a continuing commitment to quality decisions and will continue to pursue the most effective means of providing information and training and supporting professional development. In particular, priority will be given to facilitating country discussion or focus groups involving Members doing particular countries (in addition to information provided by Country Research), directed especially towards Members embarking on new countries.

Monthly caseload reports are provided to each Member detailing the cases on hand and finalised cases and to the responsible Senior Member.

## **Part-time Members**

To add certainty and provide flexibility in relation to the classification and management of part-time Member's caseloads, the bench-mark for each part-time Member will now be annualised figure of paid days from which a target can be accurately drawn (and readily adjusted).

For example, a person who works 60% of the time of a full-time Member and undertakes 60% of the target (i.e. a "three days a week" part-time Member) is in effect undertaking to work an annual number of paid days equal to 60% of a full-time Member's working days during the year. Exactly the same amount of days at work should be allowed for a notional decision by a full-time Member and a part-time Member.

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A full-time Member actually works the equivalent of 46 weeks a year (52 weeks less 4 weeks recreation leave and 2 weeks public holidays), or 230 days at work for the designated full-time target.

For Sydney, based on the 2003/2004 target of 125, the equivalent figures work out as follows:

2 days a week	(40%)	92 days a year	50 decisions
3 days a week	(60%)	138 days a year	75 decisions
4 days a week	(80%)	184 days a year	100 decisions
full-time	(100%)	230 days a year	125 decisions

For Melbourne, based on the 2003/2004 target of 115, the equivalent figures work out as follows:

2 days a week	(40%)	92 days a year	46 decisions
3 days a week	(60%)	138 days a year	69 decisions
4 days a week	(80%)	184 days a year	92 decisions
full-time	(100%)	230 days a year	115 decisions

The starting point for 2003/2004 will be an annualised number of days for each part-time Member as agreed by the Deputy Principal Member. The target is determined *pro rata* based on that number of days and as illustrated in the tables above.

- It is still the case that part-time Members are expected to work at the Tribunal to a regular pattern, to be confirmed with the responsible Senior Member, but this arrangement provides the opportunity for greater flexibility in varying that pattern within the total number of days (with the concurrence of the responsible Senior Member) without having to readjust targets.
- Once an authorisation for a particular number of days per year has been confirmed for a particular part-time Member, he/she will be paid claimed *per diems* up to that number of days in the financial year and will attract the appropriate target.
- Paid days over the designated annual number can only be worked with the advance concurrence of the DPM (in consultation with the responsible Senior Member) and will attract a commensurate adjustment to the target.
- If a lesser annual number of paid days is similarly agreed during the year, it would also attract a commensurate adjustment to the target.

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## MEMBER CODE OF CONDUCT

### 1. INTRODUCTORY

This document establishes a code of conduct (the Code) to be followed by all Members of the Tribunal in performing their functions and duties. It is the document referred to in the **Member Performance Agreement** which all selected applicants for appointment as a Member of the Tribunal will be required to enter prior to their formal appointment.

The purpose of the Code is to inform and advise Members of the expectations of the Principal Member in relation to their performance, standards of behaviour and general conduct. The Code presupposes that Members will act according to law in the performance of their duties and is designed to ensure that the independence of Members in relation to their decision-making functions is not compromised in any way.

At least once each year at a time to be decided by the Principal Member, the performance of Members will be the subject of written assessment by an appropriate executive Member or Members. The assessment process will include an interview. Assessment will be in terms of the Code of Conduct and the evaluation criteria listed in an appraisal form approved by the Principal Member. Members will be entitled to a copy of the assessment and an opportunity to comment thereon in writing.

Assessments will form part of Members' personnel files which will be available to the Principal Member for general management purposes. They will also be taken into account in the event the Member seeks re-appointment at the expiry of his or her term.

If an assessment is performed by an executive Member or Members other than the Principal Member and the subject Member is aggrieved by the result, he or she will be entitled to have the assessment reviewed by the Principal Member whose decision will be final.

In this Code, an executive Member is a person holding office as Principal, Deputy Principal or Senior Member.

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## 2. CORPORATE RESPONSIBILITIES

Members are expected to contribute to the effective administration of the Tribunal by participation in its various committees and working parties and by assisting to implement and promote its corporate and strategic goals and objectives.

In particular, Members are expected –

### *Responsibilities to the Principal Member*

- to maintain effective links with the Principal Member;
- to comply with all lawful directions of the Principal Member and, in particular, directions given by way of Practice Directions and Administrative Circular;
- to advise the Principal Member of all affiliations with persons or organisations which have the potential for causing conflict of interest or for adversely affecting the reputation of the Tribunal and to accept and act upon advice given by the Principal Member in relation to continuation of the affiliations;
- to provide the Principal Member with private addresses and telephone numbers for necessary official after hours contact and to authorise the Principal Member to make such information available to senior management personnel where necessary.

### *Propriety*

- to behave with propriety and discretion; especially in public places where identifiable as Members;
- not to accept gifts of any kind where the offer is related to or could reasonably be perceived as being related to the office of Member of the Tribunal (Where a gift is received by post or other means, it is to be delivered to the Registrar with a minute setting out the circumstances under which it was received.);
- except with the specific consent of the Principal Member, not to engage in public debate or make public statements on matters related to immigration or refugee policy or on matters related to the affairs of the Tribunal.
- to dress appropriately at all times;
- to be aware of and sensitive to cultural and special needs issues (e.g., gender, physical or intellectual handicap, age, etc);
- to ensure the confidentiality of all sensitive information which comes to attention generally as a result of membership of the Tribunal;

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- to be aware of and take all reasonable measures to ensure compliance with the confidentiality provisions of the Migration Act, the Freedom of Information Act and the Privacy Act.
- to be aware of and comply with the conflict of interest provisions of s 467 of the Migration Act.

#### *Performance*

- to monitor and oversight work performance against standards;
- to contribute to planning processes which are outcome and results oriented;

#### *Relationships*

- to treat applicants, interpreters, advisers, witnesses and other persons having business with the Tribunal with courtesy and respect and to ensure their dignity;
- to participate in the collegiate life of the Tribunal by attending and contributing to regular training sessions, conferences and informal discussion groups;

#### *Attendance and Leave (Full Time Members)*

- except where on approved leave or necessarily absent as a result of unforeseen circumstances, to attend Tribunal premises for duty during normal business hours unless elsewhere with the specific prior written consent of the Principal or Deputy Principal Member. (In this context, Tribunal premises includes circuit venues, authorised seminar premises and the like);
- where specific written consent has been given for an alternative work place, to advise his/her case management team leader on each permitted occasion and provide a contact telephone number.
- to seek approval for leave as far in advance as possible in order to minimise interruption to the work of the Tribunal and to enable personnel to process pre-payment and bonus entitlements. (In any event, approval for leave in non-urgent cases, including applications for recreation leave, to be sought at least two weeks prior to the date of the intended leave and Members to provide contact details where leave is approved).
- in the case of illness or other necessary unforeseen absence, to notify an executive Member of absence at the earliest opportunity and, upon return to work, submit a leave application for approval.

#### *Professional Development*

- to maintain effective links with the Principal Member, fellow Members, senior management and staff generally;

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- to deliver high standard oral presentations as required to both internal and external audiences and participate in the community information program.
- as directed, to attend, at Tribunal expense, selected external conferences seminars and training sessions dealing with issues of relevance to Members' duties;
- to contribute to the continuous improvement process;
- to contribute to the design, implementation and maintenance of initiatives and projects;
- to display and foster a sound understanding of the organisations wider responsibilities and corporate role;
- to communicate and project corporate values and strategic directions to other Members and staff;
- upon the request of an executive Member, to act as a mentor to new and inexperienced Members

### 3. RELATIONS WITH ADMINISTRATIVE STAFF

The objectives of the Tribunal are corporate in nature and their successful attainment is dependent upon teamwork and co-operation.

Administrative staff are appointed or employed under the Public Service Act 1999. They take their instructions from and are accountable to their registry supervisors and through them to the Registrar and, ultimately, the Principal Member as chief executive officer of the organisation. Tribunal staff are not responsible or accountable to Members other than the Principal Member and his delegates. They do, however, have an obligation to co-operate with and facilitate the work of Members in pursuance of corporate goals. This means that, when requested by a Member, staff must perform all tasks associated with the conduct of the Member's case unless those tasks do not accord with agreed Registry practice, the RRT Practice Directions or Administrative Circulars.

In their relations with administrative staff, Members must –

- be courteous and helpful; and
- refrain from giving directions to staff which are contrary to accepted registry practice or which conflict with directions given by staff supervisors. (In such situations, if informal discussions with the supervisor do not resolve the issue, the Member should take the matter up with a Deputy Registrar, the Registrar or an executive Member.)



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#### 4. THE REVIEW PROCESS

##### *Productivity, Quality and Consistency*

- Members are required to produce the target number of written review decisions for each financial year as set by the Principal Member. Such decisions must be consistent with other Tribunal decisions of a like nature and of a quality acceptable to the Principal Member.

##### *Time Lines and Work Practices*

- Members are required to deal with their caseload in accordance with administrative directions concerning time lines for the various stages of the review process and specified work practices.

##### *Priorities*

- Members are required to deal with their caseload in accordance with administrative directions concerning the levels of priority to be accorded to particular kinds of cases.

##### *Efficient Work Practices*

- Members are required to manage a multiple case load in an orderly and efficient manner. They are expected to adopt efficient work practices which will enhance their ability to produce the optimum number of decisions consistent with minimum standards of quality and consistency.

##### *Communications with Applicants*

- All case specific communications between Members and applicants or their advisers must be –
  - (1) in writing with the original or a copy on file and folioed;
  - (2) made during recorded hearings; or
  - (3) made in the presence of a staff member and a minute thereof filed and folioed.

##### *Hearings*

Members are expected to –

- be available for circuit hearings as required;

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- be available and willing to conduct hearings by telephone or video conference when directed by an executive Member;
- avoid unnecessary delays and cancellations of hearings;
- conduct hearings in accordance with the Tribunal's non-adversarial procedures and in accordance with the legislation;
- use accepted and appropriate interviewing techniques and avoid unnecessarily intrusive questions;
- use interpreters as required;
- use interpreters effectively and in accordance with accepted techniques;
- conduct hearings expeditiously and effectively and discourage irrelevancy, repetition and obfuscation;
- avoid bias or the appearance of bias;
- comply with procedural fairness requirements;
- deal sensitively with applicants' needs, culture and background;

### *Decisions*

Members are expected to write good quality decisions and to finalise those decisions as soon as practicable after hearing. The decisions must be concise, easy to understand, contain a minimum of "legalese" and accord with Migration Act, procedural fairness and other legal requirements.

Details such as applicants' names and dates must be accurate.

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## Extract from the MRT Practice Directions

### Complaints

28. Any person who wishes to make a complaint against any member or officer of the Tribunal may do so by writing to the Registrar. A complaint should give details of the matter complained of and must give the name and address of the person making the complaint.
29. The Registrar will acknowledge receipt of a complaint as soon as practicable.
30. If the subject of a complaint is an officer of the Tribunal, the Registrar will investigate the complaint and take appropriate action in relation to it. The Registrar will advise the complainant of the outcome.
31. If the subject of a complaint is a member of the Tribunal, the Principal Member will investigate the complaint and take appropriate action in relation to it. The Principal Member will advise the complainant of the outcome.
32. If a complainant is not satisfied with the way in which a complaint is handled by the Tribunal, he or she may make a complaint to the Commonwealth Ombudsman (*Ombudsman Act 1976*).

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## Extract from the RRT General Practice Directions

### 32. Complaints

A person who wishes to make a complaint against any Member or officer of the Tribunal may do so in writing to the Registrar. The complaint should give details of the matter complained of and must give the name and address of the person making the complaint. The Tribunal will not deal with anonymous complaints. The Registrar or his delegate will acknowledge receipt of the complaint as soon as practicable.

If the subject of the complaint is an officer of the Tribunal, the Registrar will arrange for an investigation of the complaint to be conducted. The complainant will be informed in writing of the outcome of the investigation.

If the subject of the complaint is a Member of the Tribunal, the Registrar will bring the matter to the attention of the Principal Member or his delegate, who will arrange for an investigation of the complaint to be conducted unless, in the opinion of the Principal Member or his delegate:

- it relates only to the fact that the person complaining did not receive a favourable decision; or
- the investigation of the complaint would involve an interference with the independent decision-making function of a Member; or
- the complainant has a right of access to a more appropriate complaint or review mechanism; or
- the complaint is frivolous or unreasonable; or
- it is made by a person who is not affected by the behaviour complained of. (A parent, guardian, adviser or other person having a legitimate interest in the welfare of the person affected by the behaviour complained of is a person affected by that behaviour.)

A person making a complaint will be notified as soon as practicable of a decision made not to investigate the complaint and the reason for that decision.

Where a decision is made to investigate the complaint, the Principal Member or his delegate shall, as soon as practicable, advise the person making the complaint of the result of the investigation of the complaint and of any action taken unless, in the opinion of the Principal Member, to do so would adversely affect the ability of any Member to perform his or her statutory duties or would otherwise prejudice the effective operations of the Tribunal.

If the complainant is not satisfied with the way in which the matter was handled, he or she may make a complaint to the Commonwealth Ombudsman (*Ombudsman Act 1976*).

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**ADMINISTRATIVE CIRCULAR 02/03**

**TO: TRIBUNAL MEMBERS**  
**FROM: STEVE KARAS, PRINCIPAL MEMBER**  
**SUBJECT: MEMBER AVAILABILITY – CONSTITUTIONS**  
**DATE: 4 NOVEMBER 2002**

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The Tribunal recognises that there may be circumstances which make it inappropriate for a Member to hear or continue to hear a particular case. Until now there has been no formal process in place for considering Member availability in such instances. Therefore, in order to ensure the effective and efficient administration of the constitution process it is necessary to implement a transparent and consistent system pre constitution for deciding and recording Member requests that they be excused from hearing particular cases in the future.

In future, Members will be required to provide detailed reasons in writing as to why they consider that they should not be constituted a particular case. These reasons are to be provided to the Deputy Principal Member in Sydney or the Senior Member in Melbourne, who will then make a recommendation to the Principal Member. It is for the Principal Member to decide, taking into account the Member's reasons, whether the particular circumstances of the situation warrant the Member being declared exempt from a particular case (or a particular category of cases).

A register of decisions made by the Principal Member on this issue will be maintained in each registry, detailing which cases particular Members are not to be allocated. The register will be reviewed annually in order to reassess the availability of Members to hear those particular cases. This will also assist with identifying these cases at the pre constitution stage and reduce the need to reconstitute cases at a later time ( for process for Member requests for reconstitution please refer to Administrative Circular 02/02 *Reconstitution of Review* ).

It should be noted that any prior arrangements that Members have had in relation to exemptions from hearing cases from particular advisers/countries will no longer be effective.

Members are reminded that they are required to be available to hear all cases and that the constitution process must be conducted at an arms length and transparent fashion in order to ensure the integrity of the Tribunal and its decision-making processes.

The above will apply with immediate effect.

Steve Karas  
Principal Member

61 2 99515986

**ADMINISTRATIVE CIRCULAR 02/02**

**TO: TRIBUNAL MEMBERS**  
**FROM: STEVE KARAS, PRINCIPAL MEMBER**  
**SUBJECT: RECONSTITUTION OF REVIEW**  
**DATE: 4 NOVEMBER 2002**

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This Administrative Circular replaces Administrative Circular 02/01 dated 19 September 2002.

The role of Members is to hear and determine the cases that are constituted to them. However, the *Migration Act* 1958 enables the Principal Member to reconstitute a particular case to another Member, where appropriate. The grounds for reconstitution of a particular review are limited to circumstances where a Member is deemed to be unavailable or where reconstitution is necessary to promote the efficient conduct of the review.

Section 422 of the Act provides the Principal Member with the power to reconstitute the Tribunal

- where a Member stops being a Member; or
- for any reason, a Member is not available for the purpose of review at the place where the review is being conducted.

The Act requires that in exercising this power, regard is to be had to the objective, set out in s.420(1), of providing a mechanism of review that is fair, just, economical, informal and quick.

Section 422 allows for the reconstitution of a review in situations of physical unavailability such as an illness or an extended period of leave. However, the section has wider application and has been broadly interpreted to apply to various other circumstances, including (but not limited to):

- a particular and exceptional request from the applicant for a male or a female Member due to the nature of their claims;
- cases incorrectly constituted due to administrative errors;
- situations where the relatedness of two cases only becomes evident after they have already been constituted to different Members and where on balance it seems desirable that they should be considered by the same Member;
- situations where the claims of two separate applicants are based on substantially the same evidence and the credibility of that evidence has previously been impugned by the Tribunal;
- where the applicant has moved from Victoria to NSW or vice versa; or
- where some form of bias (whether actual or apprehended) or conflict of interest has arisen.

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Whether a Member is unavailable is a question for the Principal Member, or his/her delegate to determine on the available evidence. A Member's own statement/reasons for unavailability would be a relevant consideration in the Principal Members' decision. Unavailability is not constituted simply by a Member's declaration of unavailability but is a matter to be assessed by the Principal Member having regard to the circumstances of each particular situation. Where it is decided that the presiding Member is to continue with the review, this shall be completed expeditiously. The direction given by the Principal Member is final.

In situations where a Member believes that a conflict of interest exists, they are required to comply with the requirements of s.467 to disclose the matters giving rise to that conflict to the applicant and the Principal Member, or in the case of the Principal Member, to the Minister. A conflict of interest is defined in s.467 of the Act as any interest, pecuniary or otherwise, that could conflict with the proper performance of a Member's function in relation to the review. The Member must not take part in the review or exercise any powers in relation to the review unless there is consent by the applicant and Principal Member or Minister. (For an examination of the degrees of relationship or association which may give rise to a conflict of interest or a perception of bias, please refer to the Minister's Direction under s. 499 of the Act (no. 15 of 1999), the Australian Institute of Judicial Administration, *Guide to Judicial Conduct*, published for The Council of Chief Justices of Australia <http://www.aija.org.au/online/GuidetoJudicialConduct.pdf> and the RRT Legal Research advice, dated 5 September 2002 [\ntssyd\OVER1000\SL1411R02.doc](#).)

Section 467 is a specific requirement and onus on Members to declare an interest and deals with the impact on the review. However, it is not an exhaustive basis upon which constitution and reconstitution decisions may be made on the basis of conflict of interest. As indicated above, issues of apprehended or actual bias may also be relevant in determining a Members' unavailability under s.422.

Section 422A deals explicitly with issues of efficiency and circumstances where removing the presiding Member from the review and constituting the matter to another Member is in the interest of achieving the efficient conduct of the review in accordance with the objective set out in s.420(1).

The Principal Member under s.422A can only give a direction

- if he or she is satisfied there is insufficient material before the Tribunal for it to reach a decision on the review; or
- more than 3 months has elapsed since the Tribunal was constituted (2 months in cases where the applicant is in detention).

A direction can only be given if a decision has not been recorded orally or in writing and the presiding Member and Senior Member have been consulted. It should be noted that the Principal Member is not bound to reconstitute the Tribunal where the matters set out in s.422A apply.

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If a Member is of the view that a matter requires reconstitution for whatever reason, they should immediately raise their concerns in writing with either the Deputy Principal Member in Sydney or the Senior Member in Melbourne. A decision will then be made by the Principal Member or his/her delegate.

A register will be kept of all requests for reconstitution and the resulting decisions. Where it is decided that the matter will be reconstituted, a copy of the signed reconstitution form will also be placed in the register. This should ensure consistency in the determination of issues relating to reconstitution.

Steve Karas  
Principal Member



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**MIGRATION ACT 1958 \ PART 6 - MIGRATION REVIEW TRIBUNAL \ Division 1 -  
Establishment and membership of the Migration Review Tribunal  
Section 402. Disclosure of interests**

**MIGRATION ACT 1958 \ PART 6 - MIGRATION REVIEW TRIBUNAL \ Division 1 -  
Establishment and membership of the Migration Review Tribunal \ Section 402.  
Disclosure of interests**

- 402.** (1) A member who has a conflict of interest in relation to a review by the Tribunal:
- (a) must disclose the matters giving rise to that conflict to the applicant and:
    - (i) if the member is the Principal Member - to the Minister; or
    - (ii) in any other case - to the Principal Member; and
  - (b) the member must not take part in the review or exercise any powers in relation to the review unless:
    - (i) if the member is the Principal Member - the applicant and the Minister consent; or
    - (ii) in any other case - the applicant and the Principal Member consent.
- (2) For the purposes of this section, a member has a conflict of interest in relation to a review by the Tribunal if the member has any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to that review.

Legend Series in effect from 1/11/2003 -

This is an extract from (please tick):

- Migration Act 1958
- Border Protection (Validation and Enforcement Powers) Act 2001
- Migration Agents Registration Application Charge Act 1997
- Immigration (Education) Act 1971
- Immigration (Education) Charge Act 1992
- Immigration (Guardianship of Children) Act 1946
- Migration (Visa Application) Charge Act 1997
- Migration Legislation Amendment (Overseas Students) Act 2000
- Gazette Notices
- Directions - s. 499
- Instruments

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**Section 457. Disclosure of interests**

467. (1) A member who has a conflict of interest in relation to a review by the Tribunal:
- (a) must disclose the matters giving rise to that conflict to the applicant and:
    - (i) if the member is the Principal Member - to the Minister; and
    - (ii) in any other case - to the Principal Member; and
  - (b) the member must not take part in the review or exercise any powers in relation to the review unless:
    - (i) if the member is the Principal Member - the applicant and the Minister consent; or
    - (ii) in any other case - the applicant and the Principal Member consent.
- (2) For the purposes of this section, a member has a conflict of interest in relation to a review by the Tribunal if the member has any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to that review.

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