

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING: 17 February 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(1) Output: Migration Review Tribunal and Refugee Review Tribunal

Senator Kirk (L&C 5) asked for a copy of the constitutions policy for the MRT and the RRT.

Answer:

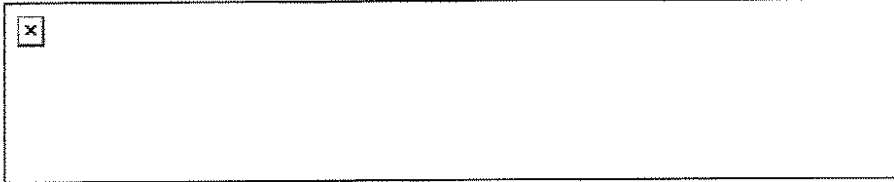
Attached is a copy of the MRT constitutions policy, which is contained in Administrative Circular 2/2000.

The MRT's constitutions policy is currently under review. Following consultation with members, a new constitutions policy will be finalised by the MRT Senior Management Group and the Joint Management Board and notified to tribunal members in May 2004.

Also attached is a copy of the RRT constitutions policy for 2003-04 as well as an amendment to the policy notified by the Deputy Principal Member dated 11 December 2003.

In May each year, following consultation with members, the RRT Senior Management Group and since last year, the Joint Management Board, the RRT's constitutions policy is issued.

The RRT's constitutions policy is to be reviewed shortly and a new policy will be notified to members in May 2004.



ADMINISTRATIVE CIRCULAR 2/2000

[Date of Issue: 11 February 2000]

TRIBUNAL CASEWORK PRIORITIES GUIDELINES AND PROCEDURES FOR CONSTITUTION

Contents

1. Constitution of the Tribunal
2. Reconstitution of the Tribunal
3. Constitutions by the Principal Member
4. Discussion with the Principal Member prior to constitution
5. MRT caseload priorities
6. Priority 1
 - Time limited cases as defined by legislation,
 - Cases to be expedited in accordance with legislation, including onshore visa cancellation cases, and
 - Applications for review where a person affected by the decision under review is held in immigration detention.
7. Priority 2.
 - Cases where there are special circumstances of a compelling or compassionate nature for the review and/or visa applicant, and
 - Federal Court remittals.
8. Priority 3.
 - 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.
9. Priority 4.
 - All other cases including new MRT and former MIRO and IRT cases by date of lodgement of undecided review application (review of offshore visa decisions) other than offshore spouse cases included in priority group 3.
10. Monitoring and reporting on the management of case priorities

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:*

- (a) *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*
- (b) *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*
- (c) *the applicant identified the event and the applicant's concern in that application; and*
- (d) *that application was refused because either:*
 - (i) *the Minister was not satisfied that the expressed intention of the applicant only to visit Australia was genuine; or*
 - (ii) *the applicant did not satisfy public interest criterion 4011; and*
- (e) *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) *a decision is made to refuse a substantive visa; and*
- (b) *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.**

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

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 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 case-load 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 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

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 |
| Total | 125 | 125 |

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.

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

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 |
| Total | 115 | 115 |

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.

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 unfailingly 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.

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.

AMENDMENT TO RRT CONSTITUTION POLICY 2003/2004

The RRT Senior Management Group has agreed to an adjustment to individual Member targets for the second half of this financial year, 2003/2004, to take into account changes in caseload and constitutions.

The new full-time minimum target for the full financial year will be 115 in Sydney and 110 in Melbourne (and pro rata for part-time Members).

Background

Recent and impending changes to the numbers and composition of cases in the compactus have some important implications for the nature of the Members caseload and have caused us to revisit the constitutions/ caseload policy for 2003/2004 adopted earlier this year.

The small numbers overall, and very small numbers from most countries, mean that the structured country caseload pursued hitherto is becoming problematic. Given the small number of available cases and their fluctuating composition, Members will have to be flexible in what they seek and accept. They will not be able to simply seek batches of agreed countries in accordance with the originally agreed structure of their caseload under the current constitutions policy. Members are increasingly having to do small numbers of cases from a wider range of countries, with inevitable consequences for the amount of time required to be spent on each case on average, because of getting one's head around new country information, caseload claims etc.

Also, as previously advised, we are expecting that in the second half of this financial year Members will be taking FPVs as up to half of their caseload, making the characteristics of these cases of particular significance. They are classified as priority cases and this kind of caseload has normally been regarded as 'complex' rather than otherwise. The degree of public scrutiny, the legal analysis involved and the problematic country information mean that in the first instance at least these cases are going to require careful (and generally more time-consuming) handling by Members.

Issues of case-load composition and complexity are addressed each year in the caseload/constitution policy, in determining the target for the coming year. Factors taken into account included inter alia the capacity of Members to make particular numbers of decisions. In that context, the individual Member's target should be a carefully considered indication of the appropriate expectation for a reasonably diligent Member doing a typically balanced case-load.

A differential target for Melbourne in that policy was based on the complexity of the case-load as well as the lesser availability of efficiencies from country specialization than in Sydney, and the smaller decrease in Melbourne now reflects the extent to which dilution of expertise with a greater spread of countries and a higher proportion of complex cases have already been recognised in the current policy.

The 2003/2004 constitutions policy also foreshadowed factors which might come to impact on the strategy and require flexibility or changes, including relative changes in application rates between countries, the treatment of TPV holders, possible remittals arising from class action applicants, the consequences of changed external refugee flows and progressive reductions in the numbers of unconstituted cases at hand.

It now appears that these factors are starting to apply across the Tribunal to a greater degree than hitherto. These significant changes in the caseload will become increasingly evident over the next month or two.

It should be emphasised that this adjustment specifically reflects the anticipated situation over the next six months. It bears no necessary implications for future targets, and (for example) future processing changes which lead to less Member time being expended on less meritorious cases might lead to a corresponding adjustment upwards in targets. In any event, we will be looking at options for the structure of the constitution policy in the context of our next annual review in February/March 2004.

(As the adjustment takes into account disjuncture in the case-load between the first and second half of the financial year, and is essentially prospective, there will be no retrospective adjustment to previous figures reflecting pro rata performance to date. Pro rata figures in the monthly reports will be adjusted from 1 January).

11 December 2003

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING: 17 February 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(2) Output: Refugee Review Tribunal

Senator Kirk (L&C 8) asked:

Since 1 July how many applications by East Timorese have progressed through the system?

Answer:

During the current financial year, 2003-04, 5 East Timor cases have been lodged with the Tribunal. As at 31 January 2004, there were 4 cases active with the Tribunal (all allocated to Members). Of the 209 cases finalised during 2003-04, 196 have been affirmed and 13 withdrawn.

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING: 17 February 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(3) Output: Refugee Review Tribunal

Senator Kirk (L&C 8) asked:

Has there been any recognition by the RRT of claims of persecution from the Iran Shiite government by the 40 Iranian followers of the ancient Sabeian religion – Sabeian Mandeans?

Answer:

As at 31 January 2004, the Tribunal had finalised 44 Iranian cases during the current financial year. Of those 44 cases, 8 cases had claims relating to Sabeian Mandeans and all 8 were set aside. All 8 were found to be refugees on the basis of this claim.

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING: 17 February 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(4) Output: Internal Product

Senator Ludwig (L&C 26) asked:

What change was made that you then operated on from the 2001 reporting convention to the reporting convention you have adopted now, where you put into the annual report a small paragraph about \$213 million of contracts with very little detail about what they are and how the public money has been expended on those types of contracts?

Answer:

The Annual Report guidelines require the inclusion of a summary statement only, detailing the number of consultancy contracts and the total expenditure during the year with more detailed information being made available as an appendix to the report, or on request or through the Internet.

In the financial year 2000-01, there were only 27 DIMIA consultancies to report and it was therefore practicable to include the full list in the Annual Report.

In subsequent years the number of consultancies increased considerably and it was no longer practicable to publish the full list in the Annual Report. The more detailed information is available on request, as the guidelines require.