

**Review of processes and proceedings for making refugee
and protection status determinations under Part 5 of the
Immigration Act 2009**

**Victoria Casey QC
31 October 2019**

EXECUTIVE SUMMARY

This report sets out my review of the processes and procedures for making refugee and protection status determinations under Part 5 of the Immigration Act 2009. I conclude that the while most of the substantive features of the Refugee Status Branch's process for making refugee and protection status determinations are generally sound, the practical day to day implementation of those processes faces a number of challenges. I make a number of recommendations for improvement, focussed on increasing transparency and certainty, and removing unnecessary points of tension and conflict.

The nature of this review and the focus of my comments inevitably present a negative picture. But I also wish to record that all the people I interviewed, practitioners and Refugee Protection Officers alike, were positive about many aspects of the RSB processes, and about many aspects of their dealings with each other. Practitioners and RPOs tended to recognise in each other a firm commitment to the objectives of the Convention and a genuine passion for this work and the interests of the claimants that they engage with

INTRODUCTION

1. I was engaged by the Ministry of Business, Innovation and Employment (MBIE) to undertake a review of the processes and procedures for making refugee and protection status determinations under Part 5 of the Immigration Act 2009.
2. The terms of reference and the required process for my review are set out at Appendix A to this report. The stated objective of my review was to ensure that the overall system for making refugee and protection status determinations are fit for purpose, support quality decisions, and are efficient, fair and timely.
3. The review formally commenced in late February 2019. Unfortunately, due to a later than anticipated start date, the review process overlapped with other commitments, and this report has taken longer than I would have preferred.
4. My review focussed on the processes and procedures of the Refugee Status Branch (RSB) of New Zealand Immigration, a part of MBIE, in dealing with claims for recognition for refugee status. It did not extend to reviewing the processes and procedures of the Immigration and Protection Tribunal. Consideration of visa and other support services available to refugee claimants was specifically excluded from the scope of my review, as was any change to legislation.
5. In addition to reviewing the RSB's formal written procedures, my terms of reference directed me to review a sample of files and interview a number of Refugee and Protection Officers (RPOs) and lawyers engaged in this field of practice. I was also authorised to speak to others that I considered may hold information relevant to my review. The interviews I undertook were in the nature of ascertaining views from a sample of people in different roles who could give me a range of perspectives, and were conducted on the basis that the individual's personal observations would be kept confidential. The identity and individual contribution of each interviewee is not significant to my report, and I accordingly do not list the names of the people I spoke to.

6. My conclusion is that while most of the substantive features of the RSB's process for making refugee and protection status determinations are generally sound, the practical day to day implementation of those processes faces a number of challenges, and is not fully supporting the achievement of the objectives outlined in my terms of reference. My recommendations for change are set out in Part 2 of this report.

STRUCTURE OF THIS REPORT

7. In the first part of this report I outline the legal context and practical environment in which the RSB makes determinations of refugee and protected person status.
8. In the second part I set out a summary of the RSB processes and the current challenges, and consider the specific question in my terms of reference, being the role of lawyers in the system. I then address the process in more detail and set out my recommendations for change at a number of key steps.

PART 1

THE LEGAL CONTEXT

9. Part 5 of the Immigration Act 2009 sets out a statutory regime by which New Zealand implements its obligations under the United Nations Convention Relating to the Status of Refugees and the Protocol Relating to the Status of Refugees, and certain obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR).
10. Section 127 provides that every claim must be determined by a refugee and protection officer (an RPO), and that in carrying out their function an RPO must act not only in accordance with the Act, but also:
- (b) to the extent that a matter relating to a refugee or a person claiming recognition as a refugee is not dealt with in this Act, in a way that is consistent with New Zealand's obligations under the Refugee Convention.
11. Determination of a person's refugee status is not a matter of discretion. Section 129 makes it clear that a person must be recognised as a refugee in accordance with the Act if he or she is a refugee within the meaning of the Refugee Convention. The Refugee Convention read in light of the 1967 Protocol (both reproduced as schedule 1 to the Immigration Act) provides that a person is a refugee if:
- ... owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

12. For persons claiming recognition of refugee status in New Zealand,¹ Part 5 of the Act sets out the following process:
- (a) A claim for recognition of refugee status is made as soon as a person signifies their intention to seek recognition to a representative of the Department (ie MBIE) or a constable;²
 - (b) Once a claim is made, the person must, on request, confirm the claim in writing in the prescribed manner;³
 - (c) A claimant must then “as soon as possible endeavour to provide” the RPO with “all information relevant to his or her claim” including a statement of the grounds for their claim;⁴
 - (d) The RPO is required to determine, in the following order (and regardless of the grounds upon which the claim was made):⁵
 - Whether to recognise the claimant as a refugee;
 - Whether to recognise the claimant as a protected person under the CAT;
 - Whether to recognise the claimant as a protected person under the ICCPR;
 - Whether the claimant has the protection of another country and can be received back there without risk;
 - For the latter two categories, whether there are serious reasons for considering that the claimant has committed specified crimes or been guilty of acts contrary to the purposes and principles of the United Nations (this does not affect their status as a refugee or protected person, but requires the Minister to determine their immigration status).
 - (e) The Act specifies that ‘to avoid doubt’ the RPO may make findings of credibility or fact.⁶
 - (f) The RPO is required to notify the person of their decision and the reasons for it, and where the claim has been declined advise the claimant of their right to appeal to the IPT.⁷ An appeal to the IPT is a full de novo determination.⁸

¹ Section 126 provides that any person who has been recognised as a refugee outside of New Zealand and brought to New Zealand under a government mandated programme on the basis of that recognition is recognised as a refugee, without the need for submission and determination of a claim under Part 5.

² Section 133(1). In limited circumstances a claim is not to be accepted for consideration – s 132, and in other circumstances the RPO may decline to accept the claim for consideration - s 134.

³ Section 133(2). The Immigration (Refugee and Protection Status Processing) Regulations 2010 do not themselves prescribe a confirmation of claim form. Rather, reg 4 provides that the confirmation of claim must be made in a form approved by the Chief Executive.

⁴ Section 133(2).

⁵ Section 137.

⁶ Section 137(5).

⁷ Section 138.

⁸ Section 198. See also the IPT Practice Note 2/2018 (Refugee and Protection). As the Supreme Court recorded in *H v Refugee and Protection Officer* [2019] NZSC 13, [2019] 1 NZLR 433 at [43], the Act contemplates two independent assessments of the

13. The Act is explicit that the claimant is responsible for establishing their claim, and to that end, must ensure that before the RPO makes a decision, they have provided all information, evidence and submissions that they wish the RPO to consider in support of their claim.⁹
14. Section 136 deals with how the RPO is to determine a claim and includes at (3) that the RPO may determine the procedures that will be followed, subject to Part 5, any regulations and any general instructions given by the Chief Executive.
15. Section 149 (under the heading ‘Miscellaneous Matters’) sets out the powers of the RPO, which includes requiring the claimant to provide such information, within such timeframes, as the RPO reasonably requires. It also permits the RPO to require the person to attend an interview. Section 149(4) then provides:

Where a person who is required to attend an interview fails to attend at the appointed time and place, the [RPO] may determine the claim or matter without conducting the interview.
16. Stringent confidentiality obligations are imposed on the process under sections 151 and 152.
17. The Immigration (Refugee and Protection Status Processing) Regulations 2010 set out in more detail the information to be provided by claimants, the obligation on the RPO to inform the claimant of certain rights, and the notification of various decisions. Regulation 15 sets out when an RPO is required to arrange for an independent interpreter to attend an interview.
18. I understand that there are no certified immigration instructions relevant to the determination of refugee status, but the Immigration New Zealand Operational Manual deals with refugee and protection determinations in Part C. The instructions generally follow and expand on the process outlined in the Act and Regulations, and confirm that the RPOs are responsible for the processing of the claim.
19. The RSB process has also been discussed by the Courts in the judicial review proceeding under *H*, culminating in the decision of the Supreme Court on 25 February 2019 in *H v Refugee and Protection Officer*.¹⁰ The Court there recorded that while there was no statutory obligation to hold an interview, an interview would normally be expected because of the importance of an assessment of the credibility of the claim, noting that this was reflected in the explanatory booklet published by New Zealand Immigration.¹¹
20. The Supreme Court also emphasised the importance of the next step in the standard process set out in the explanatory booklet, being the procedure whereby a the RPO prepares a summary of interview and provides an opportunity for the claimant to

claim: “Both the [RPO] and the Tribunal are to make their own findings of fact and of credibility and the Tribunal’s processes are not in any way limited by the material that was under consideration by the [RPO].”

⁹ Section 135. See also s 136: the RPO may seek information from other sources but is not obliged to do so.

¹⁰ *H v Refugee and Protection Officer* [2019] NZSC 13, [2019] 1 NZLR 433.

¹¹ At [32], referring to New Zealand Immigration *Claiming Refugee and Protection Status in New Zealand* (Ministry of Business, Innovation and Employment, June 2015). This is still the current guidance document for applicants.

correct any aspect of the record or deal with any concerns about the claim raised by the RPO.¹² These steps are described by the Court as a “comprehensive process”.¹³

21. Neither the Act, the Regulations or the INZ Operations Manual specify timeframes for the decision making process, but I was informed that the RSB’s position is that its process is timetabled to provide for decisions to be issued within 120 days from lodgement of the claim (ie around 17 weeks / four months).

GUIDANCE FROM THE UNHCR

22. The United Nations High Commissioner for Refugees publishes a *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*,¹⁴ and a number of Guideline documents. The Handbook confirms that the Convention and Protocol are silent on the procedures to be adopted for the determination of refugee status, and that accordingly it is left to each Contracting State to establish the procedure it considers most appropriate.¹⁵

23. The UNHCR however emphasises:¹⁶

It should be recalled however that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country, often in a language not his own. His application should therefore be examined within the framework of specially established procedures by qualified personnel having the necessary knowledge and experience, and an understanding of any applicant’s particular difficulties and needs.

24. The UNHCR also emphasises the concept of a ‘shared inquiry’ and the importance of the benefit of the doubt:¹⁷

It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible to proof. In such cases, if the applicant’s account appears to

¹² At [67].

¹³ At [67].

¹⁴ UNHCR *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, Re-issued Geneva February 2019: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5cb474b27&skip=0&query=handbook>. As relevant to the issues in this review, the Handbook is not substantially changed since the last re-issue in December 2011.

¹⁵ At [189].

¹⁶ At [190].

¹⁷ At [196].

be credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.

25. The UNHCR also provides the following overriding directive:¹⁸

Since the examiner's conclusion on the facts of the case and his personal impression of the applicant will lead to a conclusion that affects human lives, he must apply the criteria in a spirit of justice and understanding ...

THE PRACTICAL ENVIRONMENT

The claimants

26. New Zealand's isolated geographical position means that the majority of claimants for recognition of refugee status have a more complex background and travel history than may be the case in other countries where asylum seekers can arrive by a more direct route from their country of origin. Many claimants may have travelled through a number of countries before coming here, and many will have been living in New Zealand for some time. I was informed that on a very rough estimate about one third of claimants lodge a claim in the first three months after arrival in New Zealand, another third lodge their claim between three and 12 months from arrival, and another third will have been in New Zealand for more than 12 months at the time they lodge their claim.
27. This context means that credibility of claims can be a significant consideration in the determination process.
28. The number of claims is increasing. Published data¹⁹ shows that in the period July 2018 to 30 April 2019 the number of claims was 431, almost equal to total claims for the full year before. The 2018 figures were in turn an increase from the years 2014 – 2016, where the annual number of claims was in the low 300s.
29. New Zealand has not yet seen a mass arrival of claimants seeking recognition of refugee status.²⁰
30. Legal aid is available for claimants. Generally (but with some exceptions) practitioners reported few concerns with how the legal aid process interacted with the RSB processes. While some lawyers raised wider concerns with the support services for claimants outside the refugee determination processes, those matters are beyond the scope of my review.
31. The refugee bar is currently small, and most practitioners either are very experienced or working with practitioners who are very experienced.

The Refugee Status Branch

32. The Immigration Act provides that refugee status determinations are to be made by an RPO. RPOs are designated statutory decision makers²¹ and must exercise their own individual judgement in reaching their decision.

¹⁸ At [202].

¹⁹ <https://www.immigration.govt.nz/documents/statistics/statistics-refugee-and-protection-status-pack>.

²⁰ Part 9 of the Immigration Act establishes a special warrant of commitment process for mass arrivals.

33. RPOs are employees of MBIE, and are part of the Refugee Status Branch of New Zealand Immigration. There are currently 16 RPOs and two technical advisors who also act as RPOs, all based in Auckland (RPOs periodically travel to other centres to conduct interviews for claimants outside Auckland).
34. One notable feature of the current RSB that was drawn to my attention by a number of people is that there is a high turnover of RPOs. This is confirmed by the data: 5 of the 16 RPOs have been with the RSB for less than a year, and half have been there less than 2 years. At the other end of the scale, there are four staff who have been acting in this role for over 13 years.
35. While it was not within the scope of my review to consider why the RSB is not retaining staff, this does have some implications for the procedural issues that I am considering.
36. First, a high turnover of RPOs obviously has consequences in terms of the experience and expertise of the decision makers. While stakeholders were generally very positive about the newer RPOs, and pointed out that too much experience can also be unhelpful in terms of flexibility and efficiency, a large cohort of relatively new staff necessarily poses challenges to processes that require the exercise of discretion and independent judgement.
37. Second, I was also informed that the RSB has been understaffed until very recently (and is again about to fall below its full complement), and that there is a developing backlog of decisions. Data provided to me indicated that as at May 2019 the age profile of claims on hand showed around 18% of claims remained unresolved after 9 months from date of lodgement, and a small number of claims were unresolved after 2 years. Nearly 40% of claims on hand were older than 6 months from date of lodgement.

PART 2

SUMMARY OF RSB'S PROCESS AND THE CURRENT CHALLENGES

38. In broad outline, the RSB's process for determining claims for recognition of refugee status are as follows:
- (a) A claimant lodges a confirmation of claim form with the RSB;
 - (b) The claim is allocated to an RPO, who will undertake such further inquiries as they consider appropriate, including from the Country Research Branch;
 - (c) An interview date is set;
 - (d) The claimant files a full written statement prior to the interview;
 - (e) An interview is conducted;
 - (f) The RPO provides the claimant with an Interview Report;
 - (g) The claimant has the opportunity to correct any errors in the Interview Report, and to respond to any questions or concerns raised by the RPO;
 - (h) The RPO issues a decision.
39. This process is described in more detail in the booklet for claimants published on MBIE's website: *New Zealand Immigration Claiming Refugee and Protection Status in New Zealand* (Ministry of Business, Innovation and Employment, June 2015). This is available in English and five other languages.
40. The structure and key components of this process comply with the Act and Regulations, and in fact provide a higher level of input and participation from claimants than is strictly required.
41. Commentary from stakeholders is consistent with the description of the Supreme Court in *H*: this process is seen as comprehensive and thorough. It is seen as giving a claimant a very fair opportunity to present their claim both in writing and in person, and the Interview Report provides them with the opportunity to review and comment on the RPO's understanding of their claim before a decision is made, as well as to respond to any questions or concerns raised by the RPO. It is recognised that where a decision is made to decline a claim, the IPT on appeal generally value the thoroughness and detail of the Interview Report in particular.
42. On the other hand, the process is also seen as more drawn out and cumbersome than is necessary to meet New Zealand's obligations under the Convention. Two separate implications are highlighted. First, the process can be time consuming and inefficient, which will present more challenges if the number of claimants continues to rise. Second, the process places quite a high toll on claimants. Particular attention is drawn to the interview process itself, where to cover the range of detailed information required by the RPO the standard length of interview is around seven hours, conducted in a single sitting.

43. However, the overall structure of this process was not the focus of concern of any of the people I spoke to. The general feedback was that while the process could be improved (and a number of constructive suggestions were put forward), the overall structure of the process was generally sound.
44. The overwhelming focus of concern raised in my interviews was in the day to day practical implementation of this process, where the tension between RPOs and at least some of the lawyers engaged in this field has reached a level that is clearly compromising the proper operation of the system. While these concerns were not shared by all, and the content of the concerns varied considerably between the people I spoke with, reference was made to high levels of perceived disrespect and distrust, to endemic non-compliance with timeframes, and to alleged incidences of discrimination and bullying. These concerns were raised both by practitioners and by RPOs.
45. It is fortunately not the task of this review to unpick the origins of the current state of affairs. Nor is it within the scope of this review to try to resolve all the problems that must be resolved to remediate what appears to be a very tense and difficult situation.
46. My review is focussed on the RSB process for determinations. What became clear to me however is that certain features of the day to day procedures by which the overall process is implemented may themselves be playing a role in exacerbating these tensions. To be fit for purpose these procedures must be sufficiently robust to protect the integrity of the overall decision-making process, and to protect the interests and wellbeing of those that participate in it: the claimants of course, but also the RPOs and practitioners.
47. My main recommendations for change are accordingly directed to this objective, primarily by attempting to increase transparency and remove what appear to be unnecessary points of tension and conflict.

THE ROLE OF THE LAWYER IN THE SYSTEM

48. One of the questions posed in my terms of reference was to consider the role of lawyers within the refugee status determination system. Currently there are no restrictions on claimants engaging the assistance of the lawyer of their choice to assist them through the entire process (other than the usual practical constraints relating to legal aid, availability of counsel of choice and so on).
49. In my view, the status quo is appropriate. As the UNHCR notes, claimants for refugee status are normally in a particularly vulnerable situation, and the decision of the RPO will have life changing consequences. Claims can also be quite complex and the tests for meeting the definition of a refugee under the Convention are not straightforward. Lawyers have an obvious and important role in this context, to support the claimant and to protect their rights and interests and ensure a fair process. There should accordingly not be any limit placed on a claimant's option to have legal assistance if they choose to do so.
50. There is also a second, broader, reason to support the status quo. While individual claimants should be free to proceed without the assistance of a lawyer, the fact that lawyers can be engaged in the process is important for its overall integrity. The decisions made by RPOs affect human lives, in a way that is hard to conceive for those not engaged in this system. RPOs are statutory decision makers but do not have the

independence of a judicial officer: they are employed and managed through a government department that has many and varied pressures and processes. The decisions they make are also made following a process that occurs behind closed doors: the confidentiality restrictions on determinations of refugee status are stringent, for good reason. All of these factors make transparency and accountability both critically important and difficult to achieve.

51. Lawyers who engage in the process to provide assistance to claimants constitute an external and informed source of scrutiny and challenge, which is important to ensuring the integrity of the system. Obviously this can give rise to tensions, where lawyers do challenge the processes or take an approach that is regarded as overly adversarial in advancing their client's interests. However, a robust process needs to be able to accommodate the active involvement of lawyers with different practising styles and personalities. At the same time, of course, the lawyers engaged in the system are rightly expected to respect the statutory decision-makers and the role they are directed to perform, and to respect and comply with the established processes.

THE PROCESS IN DETAIL – TENSION POINTS AND RECOMMENDATIONS FOR CHANGE

52. In this part of my report I identify the particular steps in the determination process where I can see scope for changes that may improve the performance of the overall system to be fit for purpose, supporting quality decisions, and efficient, fair and timely.

DOCUMENTING THE PROCESS

53. Oddly, this was not raised as an issue by anyone I interviewed, but that is likely to reflect that all of them were experienced in RSB's processes and believed that they had a good understanding of what they were. However, as an external observer it was apparent that the lack of clear documentation about RSB's processes was contributing to the tensions between RPOs and practitioners. In addition, it can be readily inferred that a claimant without legal representation, or with inexperienced legal representation, would have difficulty in understanding exactly what was expected of them in terms of process.
54. I was provided with a range of documentation through the course of my review, but the overwhelming impression I received was that none of it fairly reflected the RSB's actual processes, and nobody operating in the system paid much regard to any of it. There is also a good deal of inconsistency between the various descriptions of the more detailed aspects of the procedure in the documents I reviewed (especially in relation to timeframes).
55. The result appears to be that RPOs and claimants (usually through their lawyers) end up negotiating the key steps of the process. This is not only inefficient, it is clearly causing problems, and I heard more than once the comment that RPOs are at times no longer in charge of the process. Given that the RPOs are statutory decision makers implementing New Zealand's obligations under the Convention, this is not a satisfactory position.
56. A robust procedural system needs to have a certain level of flexibility, but too much flexibility creates the sort of situation which seems to have arisen here, where there is an absence of shared expectations of what is required of each party and a lack of

transparency in how the process is being applied. This can lead to conflict and to a loss of trust and confidence (in both directions).

Recommendation

57. In my view, it is necessary first step in resolving the current procedural challenges faced by the RSB is for the RSB to clearly document its processes, in a way that sets out *in a single source* the detailed expectations on both claimants (and their representatives) and the RPOs in terms of process and timeframes. Various aspects of the content of those detailed procedures are discussed below, but particular attention should be paid to increasing transparency and certainty. The purpose of the documented procedures should be that everyone has a clear and shared understanding of what is expected from them in routine situations, what the process is for dealing with the non-routine events, and what the consequences are for non-compliance. While the RSB is not operating in the same way as the IPT, and should not have the same processes, the conceptual basis of the IPT's Practice Note²² may be a useful guide to the sort of detail that would be helpful in mediating the relationship between RPOs and claimants and practitioners.
58. Obviously any other necessary documents would then need to be adjusted to align with this, including the INZ Operations Manual Part C, the summary information made available to claimants, the RSB's standard form letters, and the internal RPO Desk File.

THE CONFIRMATION OF CLAIM FORM

59. As outlined above, a claim for recognition of refugee status can be made to any constable or MBIE representative, in any manner. The first formal step is the next step in the process, lodging the confirmation of claim form.
60. The form is not directly prescribed by the Regulations, but reg 4 states that the claimant must use the form approved by the Chief Executive. The form must be completed in English (this is prescribed in the Regulations).²³ The current form is at <https://www.immigration.govt.nz/documents/forms-and-guides/inz1071.pdf>.
61. I understand from my interviews that the form is generally recognised as being overly long and complicated, and certainly requires far more information than is prescribed by the Regulations. I was informed that in many cases the form is not fully completed, with sections answered with a reference to 'see statement', indicating that the requested information would be provided in the full written statement filed later in the process. RPOs reported that this created some difficulty in allowing them to undertake their inquiries in a timely manner, especially if the subsequent statement is not lodged in good time before the interview (which appears to be a not infrequent occurrence).
62. RSB appears to vary in practice as to whether it will accept an incomplete form for lodgement, which has the potential to lead to challenge and conflict with practitioners.

Recommendation:

63. I recommend that:

²² <https://www.justice.govt.nz/assets/Documents/Publications/IPT-Practice-Note-2-Refugee-and-Protection.pdf>.

²³ See reg 4.

- (a) RSB review the confirmation of claim form to limit the information requested to the information that is either prescribed in reg 4(a) or is genuinely required by the RPO in advance of the full statement (and on the assumption that the full statement will be provided in a timely manner);
- (b) RSB's published procedures include a clear statement on whether incomplete forms will be accepted as lodged, or not.

ADVISING THE CLAIMANT OF THEIR RIGHTS

64. Regulation 5 states that "when a claim reaches an [RPO], that officer must inform the claimant of [certain] rights." This statement of rights is obviously required as soon as possible.
65. I was provided with two different versions of the letter that goes to claimants once their lodgement of claim form has been received (depending on whether certain documentation is still outstanding). Both letters inform the claimant of their right to a lawyer, and both state that they enclose with the letter the *Claiming Refugee and Protection Status in New Zealand* booklet. However, neither the letters nor the booklet clearly set out *as claimant's rights* the two other rights stated in regulation 5, being:
- (a) the right to contact a representative of the Office of the United Nations High Commissioner for Refugees (including information about how to exercise that right);
 - (b) the right for an independent interpreter engaged by the Department to attend at any interview.
66. In addition, the INZ Operations Manual at C4.30 also sets out a range of other information that is to be provided in this first communication, not all of which appears to be fully covered in the letter or booklet.
67. The INZ Operations Manual at C4.55 also sets out information that must be provided to a claimant with the notice of an interview. Again, this information does not appear to be fully captured in the standard form letter advising of the scheduled interview date.

Recommendation

68. RSB review its standard form letters and revise them to comply with the Regulations and the Operations Manual.
69. RSB review its booklet to be consistent with the information required under the Regulations and the Operations Manual.

SCHEDULING THE INTERVIEW AND THE WRITTEN STATEMENT

70. I was informed that in practice once the confirmation of claim form is lodged the file is allocated to an RPO, and the RSB interpreter co-ordinator then works with the RPO and the claimant or their representative to schedule the interview. The interview is generally expected to occur about 10 weeks from lodgement, and the full written statement (including a certified translation and all supporting documentation) is expected to be filed two weeks before the interview.

71. This appears to be a key area of tension, where RPOs report having to go to extraordinary lengths with some practitioners to schedule the interview and/or obtain the written statement in sufficient time to prepare for the interview, and some practitioners complaining that some RPOs are unreasonable and harassing.
72. Some practitioners expressed very strong concerns about the speed of the RSB process, which was seen as too fast for many claims, and placing too much pressure on claimants and practitioners, especially given potential difficulties with translators, legal aid applications and clients who may have mental health issues or face other problems in their personal circumstances. Other practitioners however expressed no such concerns, and indicated that in their view the timeframes worked well.
73. RPOs in turn had concerns about some practitioners who could not be contacted to schedule interviews, or were not available in the expected timeframe, or were too busy to prepare in time. One comment made to me was that practitioners knew that an interview would be scheduled in about 10 weeks from lodgement, so they should factor that timing and workload in when accepting instructions. RPOs were also concerned with practitioners who routinely filed the written statements very late, compromising their ability to prepare for the interview and/or placing unacceptable pressure on them in terms of workload. To place this in context, the RSB apparently conducts around 500 such interviews a year, so managing pre-interview workflows for the RPOs as well as the practitioners is a genuine consideration.
74. The seriousness of the relationship breakdown between the RSB and at least some practitioners in this context was quite starkly illustrated by an unsolicited communication I received from a lawyer (not one I had interviewed), who was aware of my review. This lawyer took the initiative to write to me to complain about how an RPO was approaching their client's claim, demonstrated by an email they had received from the RPO: they described the RPO's approach as "very concerning" and illustrative of a wider problem at the RSB.
75. The email from the RPO that the lawyer took the initiative to complain to me about was as follows:
- Hi [practitioner]
- I hope this email finds you well. I am the RPO assigned to the above named case.
- I note that this interview has been set down for [date, six and half weeks from the date of the email]. This means that the written statement is due by [date, two weeks before interview].
- Please note that because I only work part time and therefore have limited to prepare for the interview, I need this written statement to be filed on time.
- Thanks very much and I look forward to seeing you.
76. The lawyer stated in their email to me that "the fact that the client is expected to work around the officer's work and living arrangements is appalling."

77. I found this complaint extraordinary. The RPO was simply – and very politely – reminding the practitioner that the timeframes needed to be met. The practitioner’s concern that this timeframe might not be possible given the client’s circumstances should have resulted in the practitioner *requesting* a change in the interview date or the date for the written statement, including offering a firm date that they and their client could commit to.
78. Overall, and trying to express matters in as balanced a way as possible, what was apparent to me from my interviews was that both RPOs and practitioners were fed up, and that there was an increasing loss of trust and respect.
79. In my view, there are a number of elements in this part of the process that could be improved to reduce the areas of friction and tension between RPOs and practitioners, which in turn may assist the process to function as it should. These primarily relate to how RSB is managing the timeframes.

Timeframes for ‘standard’ claims

80. For ‘standard’ applications (ie those by claimants who are not in custody) the expected timeframes for this part of the process appear to be well understood by practitioners familiar with this field, but are not in fact well documented. There also appears to be considerable inconsistency in practice.
81. I understand that an automated email followed by a standard form letter is sent out once the confirmation of claim form is lodged. The email states that the interview will be held in six to eight weeks, and the letters (there are two versions, as noted above) state that it will be held in four weeks in one, and four to six weeks in the other. I gather that all these indications of timing are effectively ignored by practitioners and the RSB. This is obviously not satisfactory, especially for claimants who do not have legal representation or are represented by lawyers who are not as familiar with this part of the process.
82. In addition to the automated emails and the standard form letters, the following timelines for ‘standard’ claims are described in RSB’s documentation:
- (a) The INZ Operations Manual does not mandate an interview, but states that the written statement must be provided five working days before an interview.²⁴
 - (b) The MBIE published booklet for claimants, *Claiming Refugee and Protection Status in New Zealand*, which is sent to every claimant with the letter acknowledging their claim, states that the interview will take place within four weeks of lodgement of the confirmation of claim, with statements to be provided one week prior. It also states that final decisions should be made within 20 weeks.²⁵
 - (c) The MBIE webpage²⁶ that links to the booklet states that interviews are being scheduled between 4 to 10 weeks from the date the claim is lodged. It also

²⁴ INZ Operations Manual C3.30.5.

²⁵ New Zealand Immigration *Claiming Refugee and Protection Status in New Zealand* (Ministry of Business, Innovation and Employment, June 2015) page 2.

²⁶ <https://www.immigration.govt.nz/audiences/supporting-refugees-and-asylum-seekers/asylum-seekers>.

states that the RPO “tries to decide [a] claim within 140 days”, but at the same time says that the average processing time for a claim is currently six to eight months (180 – 240 days).

- (d) The 2016 RSB “Refugee and Protection Status Process Map” that is annexed to my Terms of Reference²⁷ states that interviews will be completed within six to eight weeks of lodgement, with the written statement due two weeks prior. It states a timeliness target of 75% of cases to be decided within 140 days (20 weeks). It also includes provision for a pre-interview telephone call from the RPO to confirm practical arrangements, which I gather is generally not occurring because of the current level of tensions between RPOs and practitioners.
 - (e) The internal “timeliness standards” which are referred to in the RPO Procedures Manual Desk File which was updated in February 2019 (though the RSB staff I spoke to were not generally familiar with this) specifies 20 to 50 working days (4 to 10 weeks) from lodgement to interview, and confirms the target of 75% of cases to be completed within 20 weeks of lodgement.
83. The comment recorded above, that since practitioners know that an interview will be scheduled in about 10 weeks from lodgement, they should factor that timing and workload in when accepting instructions, is fair, but it does require that there is a clearly documented genuine timeframe that is consistently applied. It seems obvious that at least some of the tension about scheduling interview times arises from practitioners working on the 10-week timeframe and on occasions seeking to extend it, while RSB maintains pressure to hold the interview earlier in accordance with its own timeliness standards.
84. For a busy practitioner and their client, the difference between an interview taking place within 10 weeks from lodgement (allowing eight weeks for the preparation of the written statement) and an interview taking place potentially within four weeks (allowing only two weeks for the preparation of the written statement) is extreme. Having to negotiate that timing for each claimant is also time consuming and clearly frustrating for both the RSB and the practitioners.
85. The key area of improvement here is to reduce flexibility and discretion, and increase certainty and predictability in timeframes, along with the formality and transparency of the process. It is also important to set timeframes that reflect a reasonable reality, and to be clear about the consequences of non-compliance.
86. In terms of setting a timeframe for the interviews, there are obviously very strong feelings held by some practitioners that the RSB’s timeframes are too short and unreasonable. On the other hand, it is recognised that a prompt resolution of claims is important, both for New Zealand’s compliance with the Convention and for the well-being of the claimant themselves. However, on closer engagement with the concerned practitioners it appears that the difference between the outside parameter already accepted by the RSB of 10 weeks and the preferred timeframe for concerned practitioners is only two weeks. RSB should consider setting the timeframe for the interview at 12 weeks from lodgement of the confirmation of claim form, but also allow claimants to opt for an earlier interview date(s), if that can be accommodated. From the

²⁷ I understand this was prepared as an internal document explaining certain changes to the process in 2016.

data provided by RSB a 12-week timeframe would in fact be an improvement on the current average time actually elapsing between lodgement and interview.

Recommendation

87. The process would be more transparent and potentially run more smoothly if the following features were adopted:
- (a) RSB commit to a firm and much narrower window of time in which interviews would be conducted following lodgement of the claim, which is genuinely achievable in the majority of cases. Practitioners and claimants would then have certainty and control over the timing of the interview from when the claim was first lodged, and could arrange their affairs accordingly.
 - (b) RSB should consider setting this window as 12 to 14 weeks, with the option for a claimant to request an earlier interview, if that can be accommodated.
 - (c) RSB could consider requiring claimants to propose a set number of dates within that window for which they and their representatives would definitely be available for an interview (for example, four days out of a two-week window), as part of the confirmation of claim form. A firm date could then be allocated unilaterally, without the need for further discussion or negotiation. Obviously, if there were problems with availability of interpreters or an RPO on those dates, adjustments would be required.
 - (d) The timing for filing the written statement should be separated from the timing for the interview (so one is not compromised if problems arise with the other). The RSB should set a firm deadline for filing the written statement relative to the date of lodgement of the confirmation of claim form (and acknowledgment of this date could be included in the confirmation of claim form). This would again provide more certainty and control for practitioners, claimants and RPOs as to the timing of the written statement, and avoid the need for any discussion or negotiation. The timeframe should again be genuinely realistic, for both claimants and RPOs (in terms of their pre-interview preparation time), though noting that both the Act and the Regulations place the burden on a claimant to endeavour to provide this information “as soon as possible”.²⁸
 - (e) Formal documented processes should be put in place for claimants to seek extensions of time for the written statement or deferral of the interview in writing in exceptional circumstances, and these processes should be uniformly applied. Ideally these applications should be formally determined at the Technical Advisor level or above (with input from the RPO as appropriate), to maintain transparency and to ensure that the process does not devolve back down to informal engagement with the RPO.
88. While clarity of timeframes and allowing a longer preparation period should hopefully increase compliance, the RSB also should set out the consequences of claimant failing to meet these time frames. Failing to attend an interview (without good reason) is addressed in s 149(4). Failing to provide a written statement within the timeframe specified (without good reason) would appear to constitute a breach of the statutory obligation to endeavour to provide this information “as soon as possible”. The INZ

²⁸ Section 133(3) and reg 4(4).

Operation Manual sets out some good guidance on what the RPO can do in this situation: but again, if this is to be applied in practice it should be documented clearly in the RSB's procedures to ensure it is clearly understood by all parties, and implemented with appropriate consistency.

Claimants who are in custody

89. The RSB timeliness standards set different timeframes for the timing of the interview (and presumably therefore for the provision of the witness statement) for claimants who are in custody of between two and four weeks. The compression of the timeframes makes sense given the person is deprived of their liberty, although it is also clear that it can be more difficult, not less, for practitioners to assist a person who is in custody.
90. It is also not clear whether these timeframes, or anything close to them, are being achieved in practice. Data from RSB indicates that the average period for determining claims for people in custody or released on conditions is around 27 weeks.
91. There is a difficult balance to strike in terms of setting the appropriate timeframes for claimants in custody, but it seems inevitable that practitioners who make themselves available to assist claimants in custody need to be able to work under a degree of urgency. The quid pro quo is that the RPOs must also be in a position to deliver the necessary turnaround of these claims within compressed timeframes.

Recommendation

92. RSB should adopt a more transparent process for claimants in custody with fast-track but reasonably realistic timelines for the written statement and interview date (similar in structure to that outlined above). RSB should also publish the expected timeframes for the rest of the determination process for these in custody, including those steps for which the RPOs are responsible. Consideration should be given to collecting data to specifically monitor the timeliness of decisions on these claims, and to identify any particular points of pressure.

Other comments

Consequences of failing to attend interview

93. As an aside, I note that the current standard form letter to claimants about their upcoming interview includes the following statement:

If you fail to attend your interview the RSB will be unable to make any findings of fact or credibility. Your claim will therefore be determined on the basis of all information available to the RSB.

94. The Supreme Court in *H* had some difficulty with this wording in a similar statement in the decision issued by the RPO in that case,²⁹ and it is problematic: if the RPO is “unable” to make any finding of fact, how can he or she be determining the claim at all? The more appropriate wording for the concept that I understand is intended is found in the INZ Operational Manual, for example in relation to requests for further information:

Any such request must include a statement to the effect that if the officer does not receive the requested further information within the given time

²⁹ *H v Refugee and Protection Officer* [2019] NZSC 13, [2019] 1 NZLR 433 at [14] and [38].

period, the officer may proceed to determine the claim on the basis of the information available.

“Conditional” statements and interviews

95. While it is outside the scope of this review to attempt to resolve what appears to be a major issue of contention between some practitioners and the RSB regarding confidentiality restrictions, I recommend that the RSB reach a clear position on its legal obligations, and, having done so, that it set and maintain a firm position on how it will deal with these ongoing challenges procedurally. Its processes should clearly spell out a mechanism for legitimate confidentiality concerns to be raised and determined by an RPO in advance of a written statement or interview. They should also set out whether “conditional” written statements will be accepted or not, and whether (absent extraordinary circumstances) a practitioner refusing to allow their client to be interviewed in the absence of increased confidentiality assurances will be treated as a failure to attend.
96. Having clear and published rules and procedures to address these and other known areas of contention³⁰ should allow them to be dealt with consistently and appropriately, and reduce the pressure on RPOs to address these issues on an ad hoc basis, which I gather has been a source of conflict and tension to date, especially when issues are raised at the commencement of interviews.

A note on the timeliness standards

97. Adjusting the timeframes for the interview may lead to a revision of the timeliness standards, but I understand that these are not generally being applied in any event. As noted above, nearly 40% of claims on hand in May 2019 were older than six months from date of lodgement. Some of that appears to be due to delays by claimants but delays on the RSB side of the process also feature, and imposing timeframes on claimants to support those standards when they are not being evenly applied internally is likely to be a cause of further friction.
98. While this is more a matter of internal management, it is also noted particular comment was made that these timeliness standards could be operating to incentivise RPOs to prioritise claims that are assessed as likely to meet the goal of 20 weeks, at the expense of claims where that goal is not going to be attained or has already been lost.

THE INTERVIEW

99. As noted above, I was informed that the standard interview is about seven hours, conducted in a single day.
100. MBIE’s booklet for claimants describes the interview as the ‘key moment’ in the claim, and a claimant is advised to ensure that they provide all information that may be

³⁰ I am aware that other issues currently in contention include the presence of legal representatives for a claimant being present when the RPO interviews another person, the rules around interviewing children, practitioner’s requests to have direct access to the MBIE or Crown lawyers who may be providing advice to RPOs/RSB, requests to defer the determination process pending the grant of legal aid or to accommodate other personal circumstances and the role of counsel in interviews. It is beyond the scope of this review for me to investigate or attempt to resolve the substance of those issues. In terms of procedure, it is important that the day to day procedures are sufficiently robust that such areas of contention do not ‘derail’ the process of determining a claimant’s refugee status in a timely manner and in accordance with New Zealand’s obligations under the Convention. As with the confidentiality issue, it will usually be sensible for the RSB to reach a clear view of its legal obligations and publish its position in general terms on these known issues of contention, and, having done so, set and maintain a firm position on how it will deal with these ongoing challenges procedurally.

important to their case, including certified translations of any documents. An interpreter is provided where necessary. The interview is usually preceded by the RPO taking biometric information (fingerprints and a photograph).

101. The interview is intended to cover not only the narrative of events that lead the person to claim refugee status and the evidence supporting that claim, but also covers a wide range of detailed information about the person and their family. It may (and I gather usually will) cover detailed questions about family relationships, education, military service, employment history, places of residence, passport and visa questions, travel history, their situation in New Zealand, religion, political activity, and prior arrests and detentions. I understand that these matters will usually be covered in the interview even where they have been fully set out in the written statement, as a form of cross checking and confirmation, and to assist in the assessment of credibility. I also understand that the interview is usually structured so that all these matters are covered off before the questions turn to the events that form basis of the person's claim for refugee status.
102. While breaks are provided during the day, to an outsider the length and depth of this interview appears to be an extraordinary burden to place on a claimant. Answering questions over a seven-hour period is exhausting for any person at the best of times, but the stakes for a refugee claimant are incredibly high. It is likely that they will be very anxious and probably will have been so for a considerable period leading up to the interview. In addition, the content of many of the questions and answers, especially towards the end of the interview when the RPO is exploring the basis of the claim, are obviously likely to be harrowing and distressing.
103. One practitioner commented that claimants who have prepared themselves to answer questions about the basis of their claim find it very hard to spend the first half to two thirds of the interview on what seems to them to be irrelevant details of their lives, and by the time they get to talk about their claim in the mid-afternoon they are stressed and exhausted, and do not interview well. Another practitioner raised concerns about the mental health risks for a claimant at the end of this process.
104. In my view, the length of these interviews is of concern and raises issues of fairness and places undue burdens on claimants. We should not put refugee claimants through such a challenging process unless it is absolutely necessary.
105. There seems to be a general acceptance that for many claimants, much of the material covered in the interview is relevant and necessary, and the range and detail of the information collected appears to be valued in the IPT in the event of an appeal. However, there also appears to be room for more judgement and discretion to be exercised by RPOs in identifying what is truly relevant and important to the claim, and what does not need to be covered in detail in the interview. Sufficient time to prepare for the interview (with the benefit of a full written statement) may assist in that process. It needs to be acknowledged though that the number of newer RPOs may not yet have developed the experience or confidence to make those judgement calls. Comments were also made that the quality control processes in the RSB (through the 'second person check' discussed below) may encourage a more 'tick box' approach that covers off all the expected topics, rather than a considered assessment of what is truly necessary or appropriate on a case by case basis. This is something that the RSB may wish to consider further as part of its training and quality control processes.

106. One procedural suggestion put forward that could provide an immediate improvement was that the interview should cover the basis of the person's claim early on, since that is the most important and difficult part for many claimants. For some categories of claimants (for example, for those where the decision is most likely to be that they are accepted as a refugee) the RPO may have only a few more questions that need to be covered off and the interview could be completed in a half day. If the claim is not so straightforward, and the RPO considers it necessary to cover some or all of the other range of topics, the interview could be continued over to a second half day a few days later.
107. This seems to be a sensible proposal, and would have a number of more minor but nonetheless real benefits. It would give the RPO time to further consider what other material actually needed to be covered in the second phase of the interview, in light of the information provided in the first. It would reduce the pressure on the claimant, as the interview is no longer a 'one shot': any concerns they have about how well they answered questions in the first part of the interview can be aired in the second. It would be more family friendly for claimant which would again help to make the process less stressful: a full day interview ending at 5pm in Auckland's central city may be difficult to manage for claimants with family caring responsibilities. It would also incidentally place less time pressure and be more family friendly for practitioners and RPOs.
108. Another, entirely unrelated suggestion, was that for interviews conducted out of Auckland the RSB should consider engaging the services of local interpreters, rather than bringing in an Auckland based interpreter. I do not have sufficient information to assess whether this is a practical suggestion that would improve efficiency or reduce costs, but note it for possible further consideration.

Recommendation:

109. RSB should consider restructuring its interview process to:
- (a) Schedule the interview over two half days rather than a single session;
 - (b) Deal with the basis of the claim in the first day of the interview;
 - (c) Only proceed with the second day of the interview if the RPO considers it necessary to do so in light of the information provided.
110. This would obviously require slight adjustment to the process for scheduling interviews suggested above, in that claimants would need to identify a range of half days for which they were available in the relevant time window.

INTERVIEW REPORT AND SUBMISSIONS

111. While this was a relatively less contentious part of the process, there are a number of areas where there may be room for improvement.

Timeframes

112. The most obvious area for improvement is the documented expectations as to time frames. As outlined above, the documented timeframes for the interview report,

submissions and final decision vary across RSBs documents. I understand that in practice they also vary considerably between RPOs, which causes concern in two ways:

- (a) First, there is the expected (and reasonable) relatively mildly expressed grievance that practitioners are being held to a timeliness standard that is then not met by some RPOs;
- (b) Second, there was a more unexpected problem, with some RPOs being speedier than expected, placing pressure on practitioners and claimants to provide submissions and further information sooner than they had anticipated.

113. A clear and reasonably accurate statement of expected timeframes, that is consistently applied to practitioners and complied with evenly by RPOs would provide an obvious improvement in this process.

114. As part of this the RSB also needs to address the issue of receiving submissions right up to the point where a decision is issued. That appears to be the current expectation, and is reflected in a number of documents.³¹ However, it raises an immediate problem for claimants who fail to anticipate the decision date, and therefore fail to put their material in on time (I was told of a recent example where this had occurred). Greater clarity on expected decision timeframes would assist with this, but it would be better practice (in terms of fairness and natural justice) for the claimant to be given a firm and final date for final submissions or further information to be provided, after which new material will not (absent extraordinary circumstances) be taken into account.

Recommendation

115. RSB should document as part of its procedures a realistic and reasonable statement of expected timeframes for both claimants and RPOs for this stage of the process, and:

- (a) Set out the consequence of non-compliance by claimants, including a formal and transparent process for extending deadlines in appropriate circumstances;
- (b) Take steps to monitor RPO compliance (which should also allow identification of pressure points where adjustments might be required).

116. RSB should review and reach a firm position on whether it will allow final submissions and further material up to the delivery of the decision, or to a fixed date, and document that clearly.

Scope of the Interview Report

117. The second issue raised in relation to this part of the process is the volume of material provided in the Interview Report. As noted above, this is recognised as being a very fair process for the claimant, as it gives them a full opportunity to review their claim as it has so far been understood by the RPO, as well as answering any particular areas that the RPO has identified as being of potential prejudice. The detail of these reports also appears to be generally valued by the IPT when considering appeals on decisions to decline recognition of refugee status.

³¹ This is most clearly stated in the INZ Operational Manual at C4.30(b)(vii), but even that is not consistent with the later statement at C4.60.1(f) which provides for the RPO to set a final date for submissions and further evidence.

118. There are however downsides: the process of collating this depth and detail of information, and then preparing the report and addressing submissions in response, is time consuming. For some cases at least it may not be an efficient use of time. One other particular concern that was raised (not by a practitioner) was the fear that the process of reviewing and responding to all these highly detailed matters could also become too hard and too challenging for claimants, and that claimants with a good claim might opt to drop their claim rather than complete the process. This was seen as an issue that might affect self-represented claimants in particular, who might also assess the volume of material for comment as being an indication that the RPO is inclined against their claim.
119. There is no obvious procedural improvement to address these concerns, but it has been suggested that for certain types of cases, especially where recognition of refugee status is likely, the information gathering and reporting process could be reduced. As with the interviews, discussed above, this requires a level of judgement and confidence from the RPOs, and perhaps some adjustment to the RSB's quality control processes. These are matters that the RSB might wish to consider further as part of its training and quality control processes.

Quality control processes

120. I was informed that every decision by an RPO is reviewed by another RPO or a Technical Advisor, under what is referred to as a 2PC (second person check). I have already noted the observation made to me that this process may be encouraging a more 'tick box' approach that may incentivise an RPO to cover off all the expected topics, rather than to exercise their own assessment of what they need to consider to decide the case in front of them. My other comment here is that the 2PC process clearly failed to pick up the quite serious process error in the decision that lead to *H*.
121. These two factors suggest that the quality assurance processes at the RSB are not operating in such a way that they fully support quality decision making. This may be a matter of training and clarity over the 2PC role, and it is not obvious what process improvements might assist. However, one of the matters that the RSB may wish to consider is more closely monitoring the data that is available to it through the IPT appeals.
122. I understand that in broad terms around a third to a half of the 'decline' decisions from the RSB are not maintained by the IPT, and that this figure has been reasonably stable over the years. While it is undoubtedly the case that an IPT decision recognising refugee status where the RPO has not does not necessarily mean that the RPO was wrong on the facts presented to him or her (an appeal to the IPT is a full de novo hearing), these decisions provide a potentially valuable source of information to the RSB on the quality of its decision making.
123. I understand that the RSB does not currently actively review the IPT decisions for this purpose, or collate or interrogate data that might be informative of whether there are potential quality issues arising in relation to some issues or some individual RPOs, that may warrant further attention. This is something that might be considered and added into the quality assurance processes.

CANCELLING REFUGEE AND PROTECTED PERSON STATUS

124. My terms of reference also extended to the systems for cancelling refugee status and protection claims. It became apparent however that these arise relatively rarely and do not currently give rise to concerns that would be separate from those outlined above. I have accordingly not extended this report to address these processes separately, but my recommendations above should be taken to generally apply to these procedures as well.

CONCLUDING COMMENTS

125. The nature of this review and the focus of my comments inevitably present a negative picture. I do not wish to diminish the seriousness of the relationship breakdown that was so clearly apparent, and the need for action to address it, but it would be wrong to fail to record that all the people I interviewed were also very positive about many aspects of the RSB processes, and about many aspects of their dealings with each other. Practitioners and RPOs alike tended to recognise in each other a firm commitment to the objectives of the Convention and a genuine passion for this work and the interests of the claimants that they engage with.
126. I would like to express my gratitude for the time and attention that people gave to this review, including the independent practitioners who were willing to talk to me and engage with these issues in their own time. I was greatly assisted by the openness and willingness to speak freely that I encountered from everyone I spoke to. I am also however conscious that in this review I have not been able to touch on let alone attempt to resolve all the matters and concerns that were brought to my attention. Clearly there is much work to be done to rebuild trust and respect between the RSB and practitioners, and I hope that my recommendations here will at least serve to remove some points of pressure and assist in establishing a better framework for that relationship to develop in a more positive direction.

TERMS OF REFERENCE

PURPOSE

1. This document sets out the parameters for a review of the processes and procedures for making refugee and protection status determinations under part 5 of the Immigration Act 2009.

BACKGROUND

2. Part 5 of the Immigration Act 2009 provides for making refugee and protection status determinations. Claims for refugee and protected status are made to the refugee and protection officers in the Refugee Division of the Settlement Protection and Attraction branch in MBIE.
3. Section 136 (3) of the Immigration Act 2009 permits the Refugee and Protection Officers to determine the procedures that are followed on a claim subject to the part 5 of the Act, regulations and general instructions given by the Chief Executive.
4. In making refugee and protection status determinations refugee protection officers follow the operational instructions and the RSB determination manual
5. Feedback from both the Refugee Division and from lawyers for claimants indicates there is an opportunity to significantly improve the overall system for making determinations.

SCOPE

6. The Reviewer is asked to:
 - Review the system for making and cancelling refugee status and protection determinations and for
 - Review the operational instructions and the RSB determination manual.
 - Review a sample of case files
 - Consider the role of lawyers within the system
 - Interview the refugee protection officers and lawyers named in the annex to these terms of reference and any other person she considers holds information relevant to the review and may be of assistance in the review.
 - Make recommendations as to how the system might be improved.

Objectives

The objectives of the review are to ensure that the system for making refugee and protection status determinations is fit for purpose, supports quality decisions, and is efficient, fair and timely.

Out of scope

7. The following items are out of scope:

- Any change to legislation. The review is intended to look at improvements to the system that can be accommodated within the existing law.
- The competency and performance of any MBIE employee engaged in the system.

ROLES & RESPONSIBILITIES

Reviewer

8. The Review will be carried out by Victoria Casey.
9. [REDACTED] Legal Services will be responsible for providing support to the reviewer.
10. [REDACTED] will assist with the provision of documents.

Reporting

11. A draft report will be prepared containing the results of the review, summarising key findings and recommendations for any process improvement and submitted to MBIE for comment.
12. A final report will be made available to Greg Patchell Deputy Chief Executive Immigration on a date to be agreed.

Publication

13. The Review and any report will be made public. The reviewer has been selected for her judgement and knowledge of legal processes but it is not intended that her report is legal advice such that legal professional privilege will apply.

Appendix High Level Process maps for refugee status and protection claims and cancellation of claims.