



Immigration and Protection Tribunal

**Annual Report
2015/2016**

Judge Peter Spiller
Chair

July 2016

Introduction

The Immigration and Protection Tribunal was established under section 217 of the Immigration Act 2009 (the Act).

Section 224A of the Act requires the Chair of the Tribunal to provide an annual report to the Minister of Justice, the Minister of Immigration and the Minister for Courts on the performance of the Tribunal's functions under the Act in the preceding financial year. The report must include details of the number and nature of the determinations made by the Tribunal in the period to which the report relates.

Although there has in previous years been no statutory requirement for the Tribunal to produce an annual report, it has been the Tribunal's practice to provide such a report to the Ministers of Justice, Immigration and Courts. This is the fifth full annual report of the Tribunal, and covers the 12 months from 1 July 2015 to 30 June 2016.

This report contains no financial statements because the Chair does not determine the Tribunal's budget.

Further details are contained in the appendices to the report.

Highlights

1. The highest number of decisions released (1,274) in the Tribunal's history.
2. A record 36% reduction in the number of disposable appeals on hand: these are now at the level last reached in December 2010. Progress was made in all streams of work, and in particular:
 - residence appeals (reduced by 49%, including progress with business appeals); and
 - disposable deportation (resident) appeals (reduced by 36%).
3. A record 26% reduction in the time taken for matters to be finalised: appellants are now waiting an average of 88 days less to receive the outcome of their appeal than they were at the start of the court year.
4. A record 29% reduction in the average time taken by members to release their decision after allocation of file or hearing: decisions are now released within an average of 32 days (13 days earlier than at the start of the court year).
5. No decisions of the Tribunal overturned on judicial review or appeal.
6. Publication of a Practice Note on the publication of Tribunal decisions, and revision of the Tribunal's Code of Conduct.
7. Ongoing professional development of members by way of annual training, training relating to residence, deportation and refugee/protection law, and participation in local and overseas conferences.
8. Development of the summer internship programme with the Tribunal for students of Auckland University.

Statutory Functions and Procedures

The functions of the Tribunal are set out in section 217(2) of the Act:

- (2) The functions of the Tribunal are—
 - (a) to determine appeals against—
 - (i) decisions to decline to grant residence class visas:
 - (ii) decisions in relation to recognition as a refugee or a protected person:
 - (iii) decisions to cease to recognise a person as a refugee or a protected person:
 - (iv) decisions to cancel the recognition of a New Zealand citizen as a refugee or a protected person:
 - (v) liability for deportation:
 - (b) to determine applications—
 - (i) made by refugee and protection officers in relation to the cessation of recognition of a person as a refugee or a protected person, if the recognition was originally determined by the Tribunal (or by the Refugee Status Appeals Authority under the former Act):
 - (ii) made by refugee and protection officers in relation to the cancellation of recognition of a New Zealand citizen as a refugee or a protected person, if the recognition was originally determined by the Tribunal (or by the Refugee Status Appeals Authority under the former Act):
 - (iii) made by the Minister under section 212(2) on whether a person has failed to meet his or her conditions of suspension of liability for deportation:
 - (c) to deal with certain transitional matters arising from the repeal of the Immigration Act 1987, in accordance with Part 12 of this Act.

The Tribunal may conduct its proceedings in an inquisitorial manner, an adversarial manner, or in a mixed inquisitorial and adversarial manner as it sees fit (section 218 of the Act).

Members of the Tribunal

As at 30 June 2016, the Tribunal consisted of the following full-time equivalent (FTE) and part-time members, in addition to the Chair:

<u>Name</u>	<u>Location</u>	<u>Position</u>	<u>FTE</u>
C M Treadwell	Auckland	Deputy Chair	1.0
S A Aitchison	Auckland	Member	0.8
M Avia	Auckland	Member	0.8
B L Burson	Auckland	Member	1.0
A M Clayton	Wellington	Member	1.0
A Davidson	Auckland	Member	0.5
B A Dingle	Auckland	Member	0.8
J A Donald	Auckland	Member	1.0
P F Fuiava	Auckland	Member	1.0
M B Martin	Auckland	Member	1.0
A N Molloy	Auckland	Member	0.8
L E Moor	Auckland	Member	1.0
S M Pearson	Wellington	Member	1.0
Z N Pearson	Auckland	Member	1.0
V J Shaw	Auckland	Member	0.8
D Smallholme	Auckland	Member	1.0
V J-M Vervoort	Wellington	Member	1.0
L Wakim	Auckland	Member	0.5
Total FTE			16.0

From August 2015, Mr Davidson was appointed to a 0.5 position, following Ms Wakim's request that her commitment be reduced from full-time to a 0.5 position, for two years.

Dispatch of Tribunal Business

In terms of sections 220(1)(a) and 223 of the Act, the Chair is responsible for making arrangements to ensure the orderly and expeditious dispatch of business in the Tribunal. The following measures were continued or instituted during the past year:

Performance Appraisal of Members

In 2015/2016, the Chair continued the process of biannual performance appraisal meetings with each of the members. These meetings are designed to review performance over recent months (in terms of the number and timeliness of decisions), set targets for disposal of appeals, and discuss any other issues relating to the work of members.

Practice Note

In terms of section 220(2)(a) of the Act, the Chair of the Tribunal may issue Practice Notes for the purpose of regulating the practice and procedure of the Tribunal. On 1 April 2016, the Publication Practice Note was issued. This clarifies the Tribunal's stance on protecting the confidentiality of appellants. This Practice Note, and the existing Practice Notes, are designed to provide guidance to members of the legal profession, immigration advisers and those appearing in person before the Tribunal.

Website and Synopses of Decisions

An important objective of the Tribunal is to provide public access to the Tribunal's work, in the interests of promoting greater accountability, awareness and understanding. The Tribunal's website contains all the published decisions of the Tribunal and, for ease of access, there are up-to-date synopses of these decisions and mechanisms for searches.

Templates

To promote consistency of approach and presentation of Tribunal decisions, templates for the framework of decisions have been used by Tribunal members for several years. The templates are reviewed on an ongoing basis.

Internal Liaison

There are monthly meetings of all members, and regular meetings of members involved in the refugee and protection stream. From February 2016, the Chair instituted a monthly meeting of members involved in the residence stream. Meetings were also held for those involved in the deportation (resident) stream, as required.

The Chair appointed Mr Burson as administration manager of the refugee and protection stream and Mr Molloy as administration manager of the deportation (resident) stream. Together with the Chair, Deputy Chair (Mr Treadwell), Ms Donald (administration manager of the residence stream) and Ms Dingle (administration manager of the deportation (non-resident) stream), they formed a management committee which periodically met to discuss issues of concern and advise the Chair.

Fostering a team spirit amongst the members and the administrative staff continued, and the Chair also continued a monthly tea gathering open to all Auckland members and staff. The Chair reinstated the practice of visiting the Wellington members once a month and hosting lunch gatherings for members and staff.

External Liaison

The Tribunal functions as a unit within broader structures and is required to liaise with other interested bodies. In the past year, the Chair and other staff or members met with the Minister of Justice, the Associate Minister of Immigration, the Secretary for Justice, the Acting General Manager of Special Jurisdictions, the National Manager of Specialist Courts and Tribunals, members of the Ministry of Business, Innovation and Employment, the Tribunal's Liaison Team, the Refugee Status Branch of Immigration New Zealand, the New Zealand Law Society and the Auckland District Law Society. Messrs Treadwell and Burson and Ms Dingle met a group of NGOs from Asia (called APRRN), who discussed their concerns about refugees in the Asia region.

The Chair gave presentations to the New Zealand Association of Immigration Professionals, a Judge's Clerks' conference, the Auckland Community Law Centre, and an Asylum Forum organised by the Refugee Status Branch. Mr Treadwell gave presentations at the annual Immigration Law Conference and a Refugee Asylum Forum organised at the University of Auckland. He also went to Tokyo, in response to a UNHCR request to provide training in refugee law to immigration officers and others.

Over the summer of 2015/2016, the Tribunal was enriched with the presence of interns from Auckland University Law School, who produced good work for the Tribunal and hopefully benefited from the experience and their involvement in the Tribunal.

Education, Training, and Professional Development of Members

In terms of section 220(1)(b) of the Act, the Chair is responsible for directing the education, training, and professional development of members of the Tribunal. During the current year, the following measures were put in place to facilitate these objectives.

Education and Training

In July 2015 there was a two-day training session held on residence appeals for members new to this stream. In October 2015, there was a training day for members involved in the deportation (resident) stream. In December 2015, a two-day training session was conducted for all members. Amongst the new learnings identified by members were the need to watch for creeping bias; learning new tips and tools for decision-making; gaining new insights into the peer review process; and reflecting on the importance of cumulative assessment in decision-making. In February 2016, members of the residence stream heard Dr Leo Liao speak on Chinese law and business practices in relation to business residence applications. In March 2016, training in refugee and protection appeals was provided for all members who had not previously undertaken this work.

Professional Development

The biannual performance review meetings with members (noted above) are designed to support the professional development of members. Monthly newsletters provided members and administrative staff with information on the Tribunal and its performance, and attached a summary of relevant recent decisions and upcoming events in New Zealand and overseas.

An important aspect of ongoing professional development is the system of peer review in the Tribunal. Every decision produced by a member is sent in draft form to a colleague experienced in the stream for review and feedback. This process is designed to enhance the quality of decisions produced by the Tribunal.

Members may, on work time, undergo training, attend conferences and give conference presentations, and liaise with relevant bodies and persons overseas. Many of these attendances are self-funded by members, but the Ministry provides a contribution to expenses where appropriate. The Chair attended training on decision-making delivered through the Institute of Judicial Studies. Ms Aitchison attended the Salzburg Law School Summer Programme, on International Criminal Law.

Mr Burson attended a number of meetings overseas on natural disasters, climate change and human mobility. Ms Clayton attended a conference of the Commonwealth Magistrates' and Judges' Association in Wellington. Messrs Treadwell and Burson and Ms Dingle attended (and helped to organise) a conference of the Asia Pacific chapter of the International Association of Refugee Law Judges (IARLJ) in Seoul. Mr Burson, Ms Moor and Ms Aitchison attended a conference on "The future of refugee law" in London.

In February 2016, Mr Burson's book, *Human Rights and the Refugee Definition*, was published.

In May 2016, the Tribunal's Code of Conduct was revised.

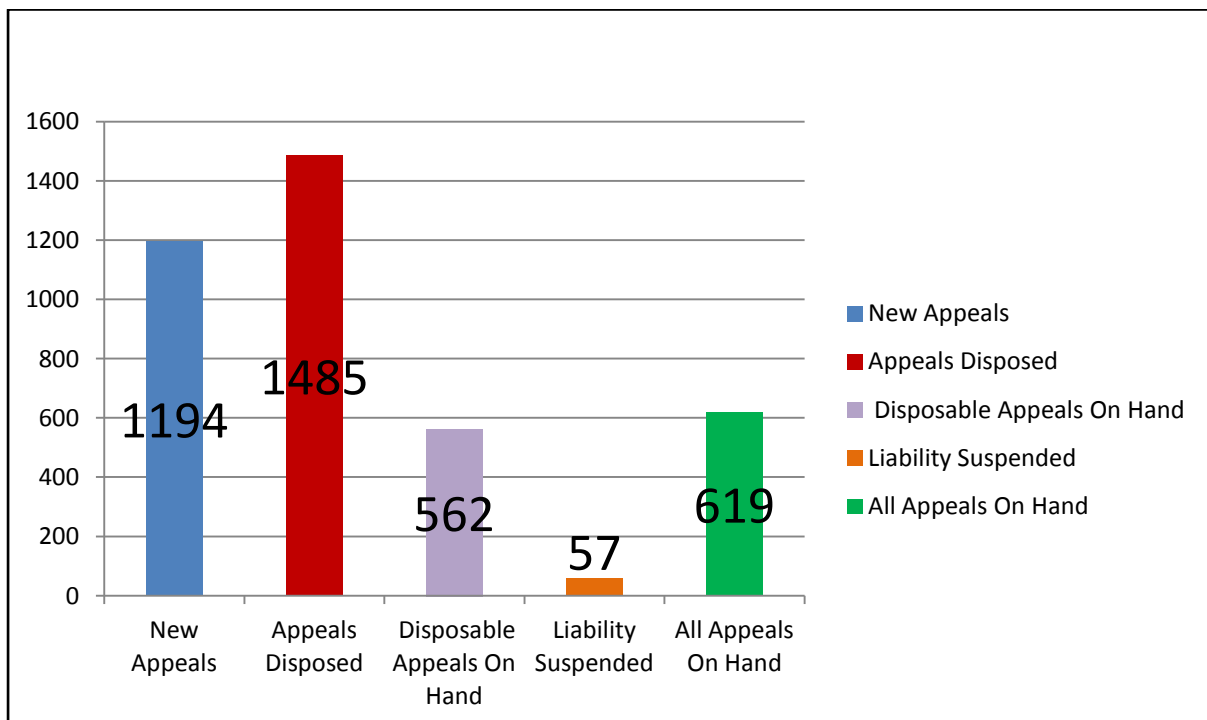
Number and Disposal of Appeals in the Tribunal

The Tribunal started the 2015/2016 year with 878 disposable appeals on hand, and accepted 1,194 new appeals. (Disposable appeals exclude those appeals where the deportation liability of the appellant has been suspended by the Minister of Immigration.)

In the 2015/16 year, the Tribunal finalised 1,485 appeals, comprising 1,274 decisions and the rest being withdrawn or determined to be invalid. The number of decisions released is a record number in the Tribunal’s history. The number of new appeals received by the Tribunal saw a decline of 12% compared with the previous year.

As a result, there was a reduction in the number of disposable appeals on hand to 562 appeals (a reduction of 36%). This is the lowest number of appeals on hand since the Tribunal’s inception in November 2010. In addition to these appeals, there are 57 deportation appeals where liability for deportation has been suspended, and so they cannot (and may never) be heard unless the appellant breaches the terms of the deportation liability notice.

Number of Appeals 2015/2016



Nature of Appeals in the Tribunal

There are four primary streams of work in the Tribunal, corresponding to the four former Tribunals that were amalgamated in November 2010 to form the present Tribunal. They are the residence, deportation (non-resident), deportation (resident), and refugee & protection streams. Appeals in the first two streams are decided on the papers and appeals in the latter two streams are decided after a hearing. A new stream of work commenced in 2015, involving deportation liability following cancellation of refugee and/or protection status. This is also a hearing-based stream, following the same procedure as deportation (resident) appeals. The number of appeals in this stream is low, with the only matter on hand being finalised.

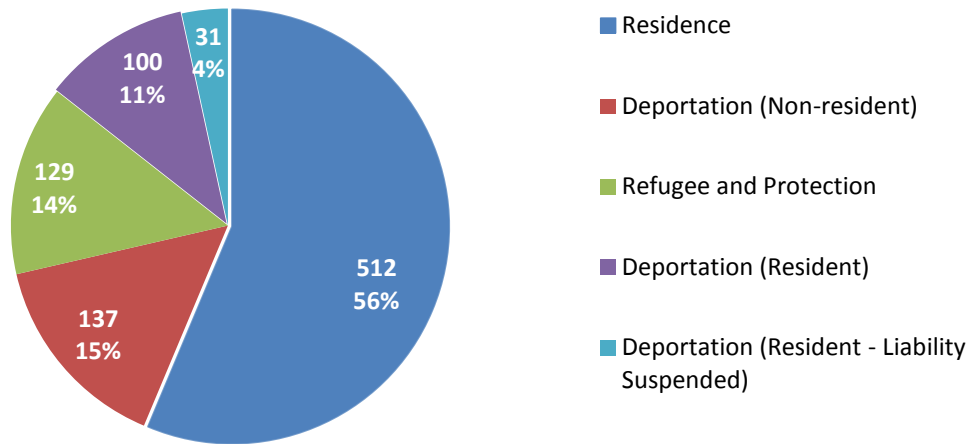
During the past year there has been a change in the proportion of work across the streams. The Tribunal began the year with 56% of its appeals on hand being residence appeals, 15% deportation (non-resident) appeals, 14% refugee & protection appeals, 11% disposable deportation (resident) appeals, and 4% suspended deportation (resident) appeals. The Tribunal ended the year with 42% of its appeals on hand being residence appeals, 18% deportation (non-resident) appeals, 20% refugee & protection appeals, 11% disposable deportation (resident) appeals, and 9% suspended deportation (resident) appeals.

The most significant change has been the decline in the number of residence appeals on hand (a decline of nearly half). This decline was the result of a concerted effort to reduce the backlog in this stream.

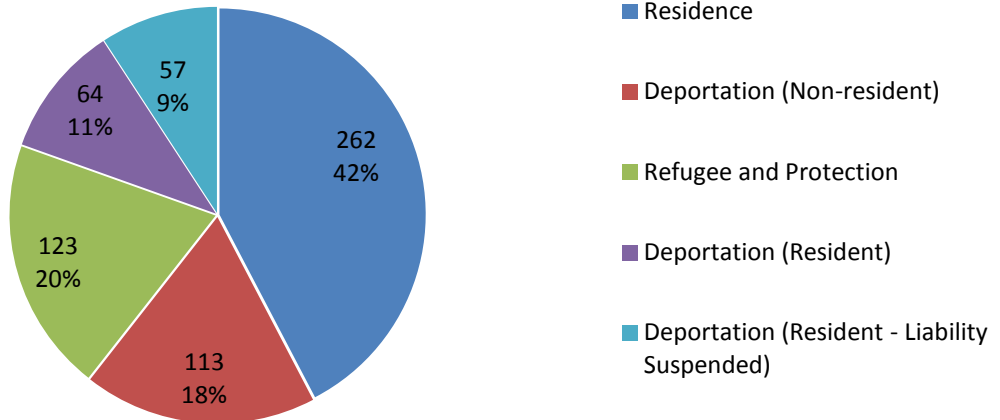
The rise in the percentage of refugee and protection appeals (by 6%) was primarily the result of the decrease in the percentage of residence appeals, and extra resources have been devoted to this stream in the coming year.

There was also a rise in the percentage of appeals lodged (by 5%) where deportation liability has been suspended by the Minister. The trend so far is for these appeals to be withdrawn after the period of suspension with no further offending, with very few appeals being activated for hearing.

Appeals on hand at 30 June 2015



Appeals on hand at 30 June 2016



Timeliness of Tribunal Decision-making

The expeditious dispatch of appeals in the Tribunal is a key objective of the Act. The Tribunal is keenly aware that the decisions made by the Tribunal are of considerable importance to appellants, and that prompt delivery of outcomes is a central aspect of the administration of justice. The Tribunal has concentrated on addressing its oldest appeals where possible. Each month the Chair monitors the flow of Tribunal business (particularly aged decisions), and dispatch of business is part of the performance appraisal of members.

Progress has been made in timeliness of Tribunal decisions. The period from receipt of an appeal by the staff of the Tribunal to release of the decision has been shortened by 88 days compared with the previous year. Part of the reason for this is that the average time taken by members from allocation of their file (in the paper-based streams) or last hearing (in the hearing-based streams) to finalising the decision has been reduced by 13 days (from 45 to 32). The average age of active appeals has been reduced by 5 days (208 to 201 days).

The most significant progress has been evident in the deportation streams. In the deportation (resident) stream, the period from receipt of appeal to release of decision has been reduced by 292 days (to 414 days), and the time from hearing to release of the decision has reduced by 13 days (to 52 days). In the deportation (non-resident) stream, the period from receipt of appeal to release of decision has been reduced by 196 days (to 133 days), and the time from allocation of file to release of the decision has reduced by 11 days (to 27 days).

The progress in time taken to process deportation (resident) appeals is particularly noteworthy because such appeals are often lodged while the appellant is serving a sentence of imprisonment. Section 236(1) of the Act requires the Tribunal to consider and determine such appeals as close as practicable to the date of the person's parole eligibility or statutory release. In some cases, this can be years after a person has appealed his or her deportation liability notice. The Tribunal also has no control over the passage of time where deportation liability has been suspended by the Minister.

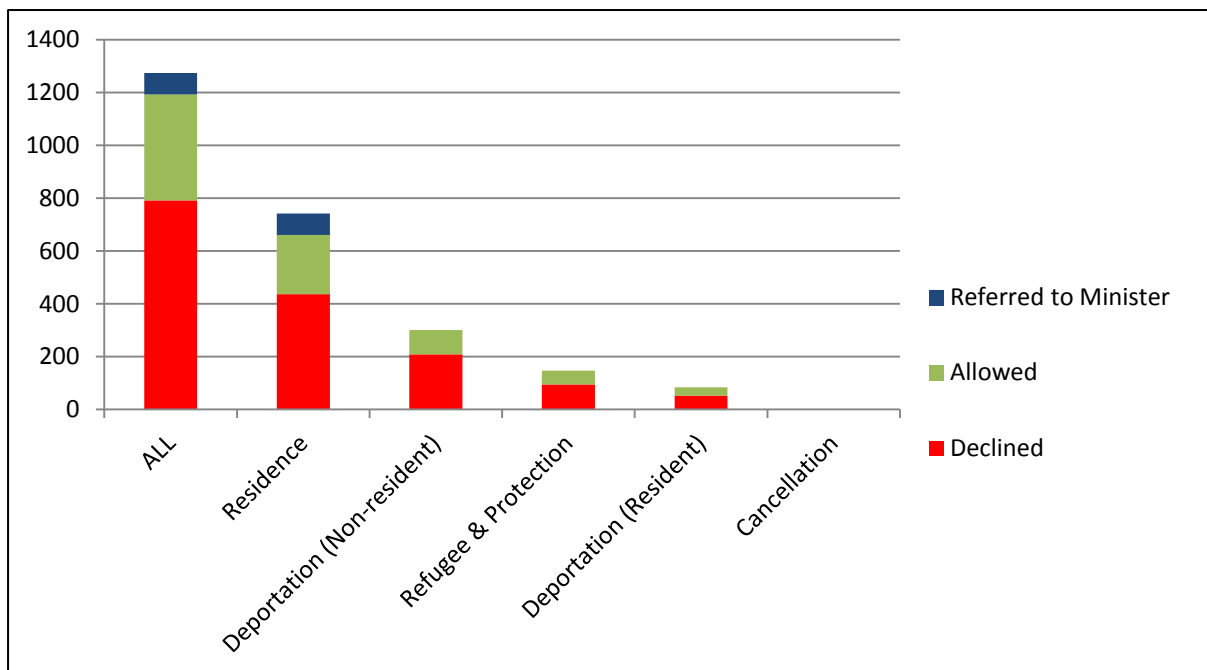
See chart F.3; F.4; F.5 pages 23–25.

Outcomes of Appeals in the Tribunal

Of the decisions released by the Tribunal in the past year, 69% resulted in the appeal being declined, 31% of appeals were allowed, and 11% (all residence decisions) found that the decision of Immigration New Zealand was correct, but referred to the Associate Minister of Immigration as special circumstances were identified. The percentage of appeals declined in the previous court year was 63%, while 31.5% were allowed and 5.5% were declined but referred to the Minister.

In the residence stream, 30% of appeals were allowed, in the deportation (non-resident) stream, 31%, in the refugee & protection stream, 35%, and in the deportation (resident) stream, 38%.

Outcomes of Appeals



Judicial Reviews/Appeals

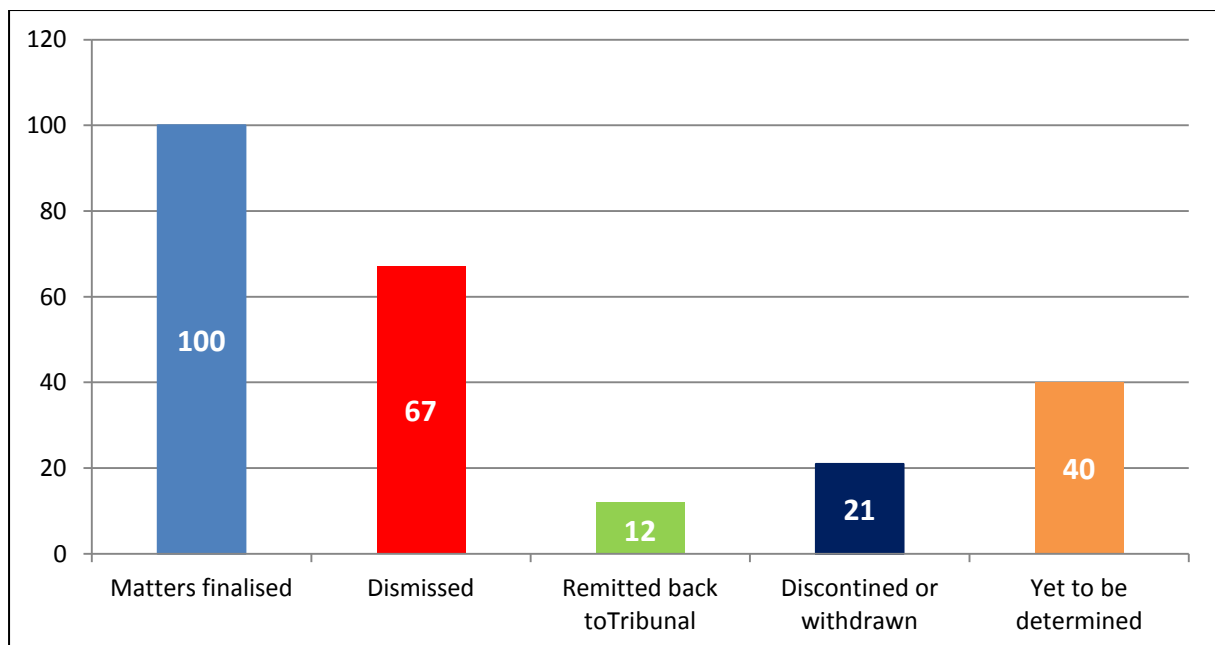
Appellants have the right of appeal on points of law and the right of judicial review of proceedings of the Tribunal (see sections 245 and 247 of the Act). One measure of the quality of the Tribunal's decisions is the low number of its decisions that are successfully appealed or judicially reviewed.

In the past year, there were 47 appeals and/or judicial review applications lodged in the High Court. These constituted 3.7% of the Tribunal's 1,274 decisions released in that period. This compares with 26 appeals (2%) lodged in the previous year and a total of 134 appeals (3%) from all decisions released since the Tribunal commenced.

Of the 100 appeals/applications for review determined by the higher courts since the Tribunal's inception, 67 have been dismissed (67%) and only 12 have been allowed (12%). A further 21 have been discontinued, struck out or withdrawn. Forty matters are yet to be determined. One matter remitted back in the 2014/15 year was not recorded in the last annual report.

No appeals/applications for review were allowed in the past court year.

Matters appealed to higher courts since Tribunal's inception



Acknowledgements

I record my appreciation to the members of the Tribunal who have supported me and the work of the Tribunal over the past year. In particular, I am grateful for the invaluable support, counsel and expertise of Deputy Chair Martin Treadwell.

I thank the Ministry of Justice staff who undertake the administrative functions of the Tribunal. They have shown cheerful commitment and conscientious dedication to their work, and help make the Tribunal function efficiently and responsibly. I am especially grateful to the Tribunal's Operations Manager, Jessie Henderson, for her unfailing support and assistance. I thank the Tribunal's Jurisdiction Manager, Minja Pesic, and the Chair's Assistants, Sharon Salmon, Duncan Glasgow and Michelle Williams, for their professionalism and efficiency. I also thank Tracy Cook, Legal and Research Advisor, for her assistance in completing this report.



Judge P Spiller
Chair
Immigration and Protection Tribunal

APPENDICES

ALL APPEALS 1 July 2015 to 30 June 2016

Chart A.1

Total Tribunal Appeals on Hand

Appeals on hand at start of year	New appeals	Withdrawn or invalid	Decisions released	Appeals finalised	Appeals suspended	Disposable appeals on hand at end of year	Total appeals on hand at end of year
910	1,194	211	1,274	1,485	57	562	619

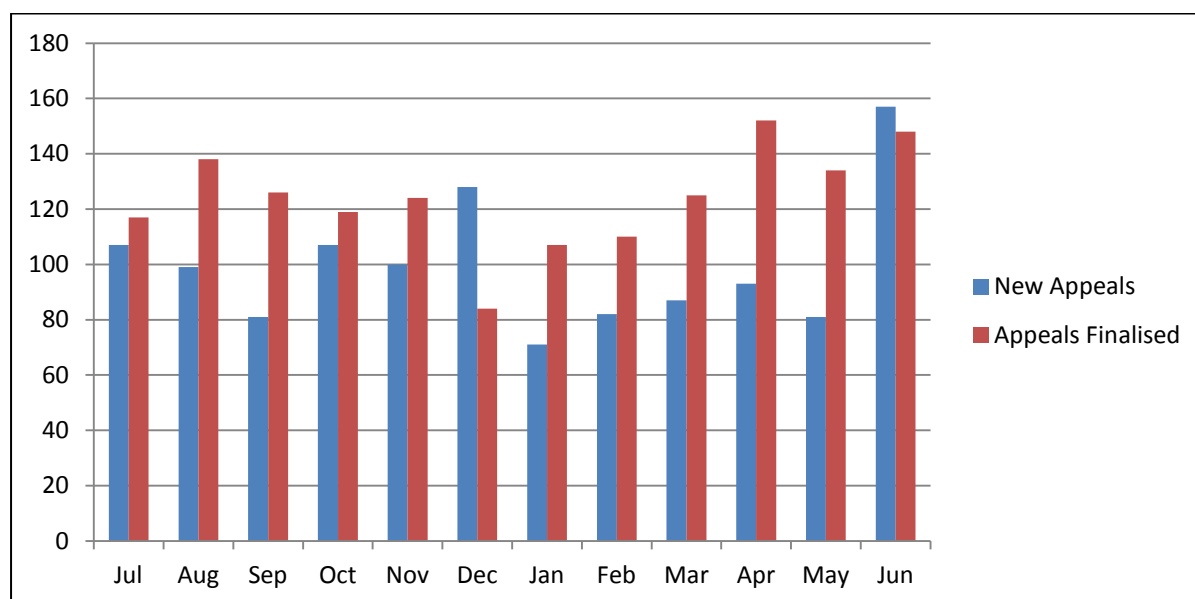
Chart A.2

Total Tribunal Decisions Released

Declined	Allowed	Referred to Minister	Total
791	401	82	1,274

Chart A.3

Total Tribunal Caseflow – by Month



RESIDENCE APPEALS
1 July 2015 to 30 June 2016

Chart B.1

Residence Appeals on Hand

Appeals on hand at start of year	New appeals	Withdrawn or invalid	Decisions released	Appeals finalised	Appeals on hand at end of year
512	556	64	742	806	262

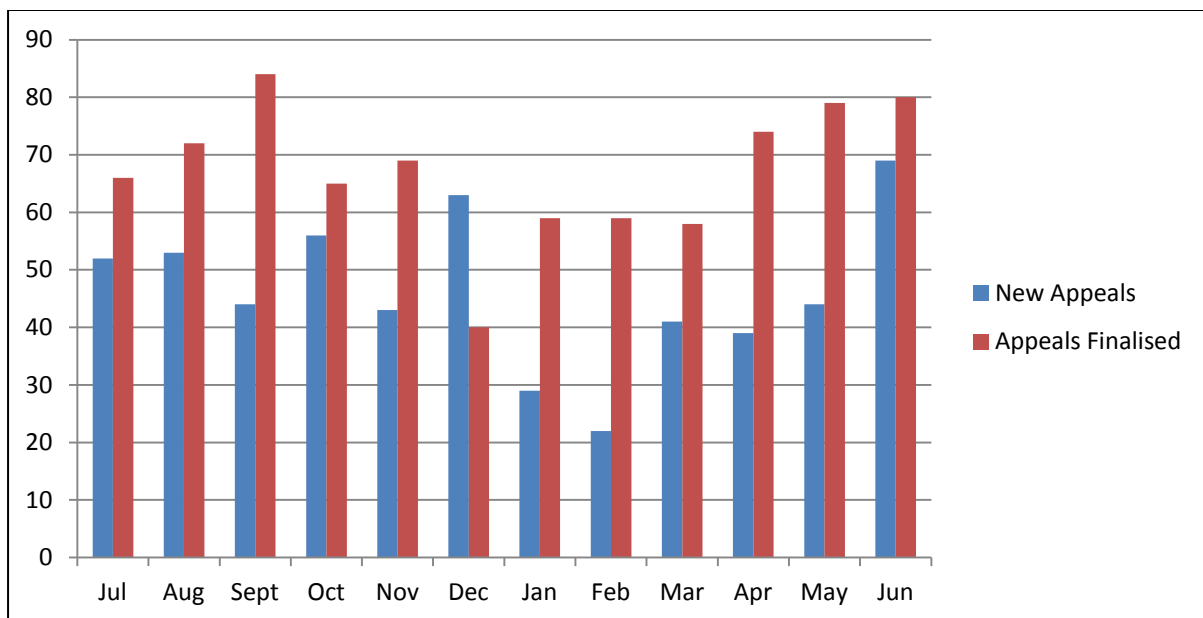
Chart B.2

Residence Decisions Released

Declined	Allowed	Referred to Minister	Total
436	224	82	742

Chart B.3

Residence Caseflow – by Month



**DEPORTATION (RESIDENT) APPEALS
1 July 2015 to 30 June 2016**

Chart C.1

Deportation (Resident) Appeals on Hand

Appeals on hand at start of year	New appeals	Withdrawn or invalid	Decisions released	Appeals finalised	Appeals suspended	Disposable appeals on hand at end of year	Total appeals on hand at end of year
131	88	14	84	98	57	64	121

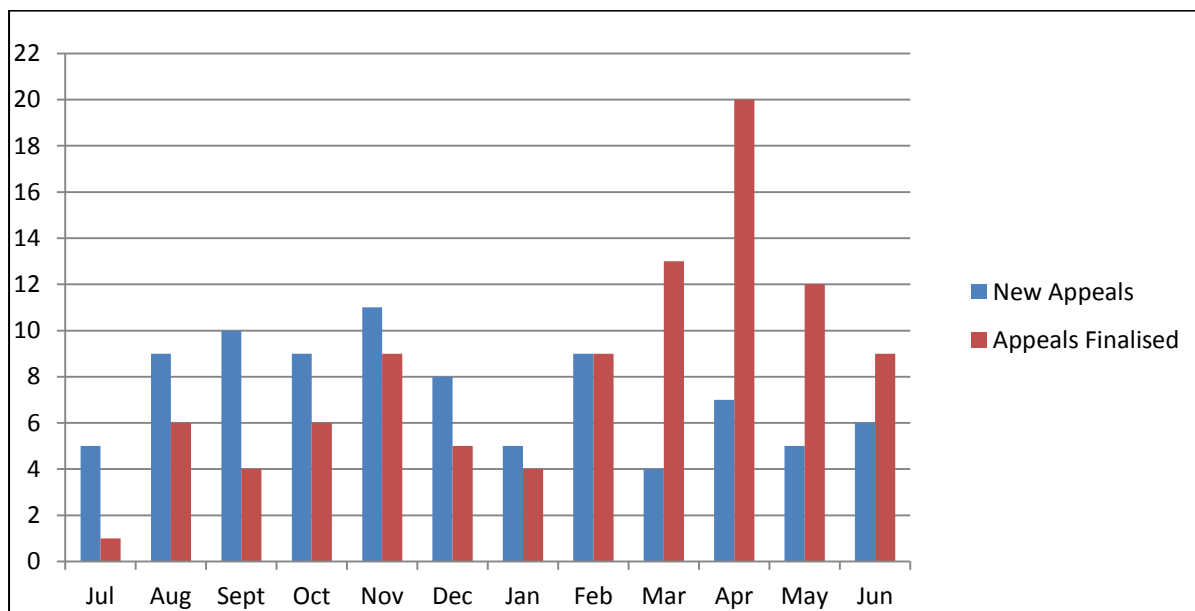
Chart C.2

Deportation (Resident) Decisions Released

Declined	Allowed	Total
52	32	84

Chart C.3

Deportation (Resident) Caseflow – by Month



DEPORTATION (NON-RESIDENT) APPEALS
1 July 2015 to 30 June 2016

Chart D.1

Deportation (Non-resident) Appeals on Hand

Appeals on hand at start of year	New appeals	Withdrawn or invalid	Decisions released	Appeals finalised	Appeals on hand at end of year
137	398	122	300	422	113

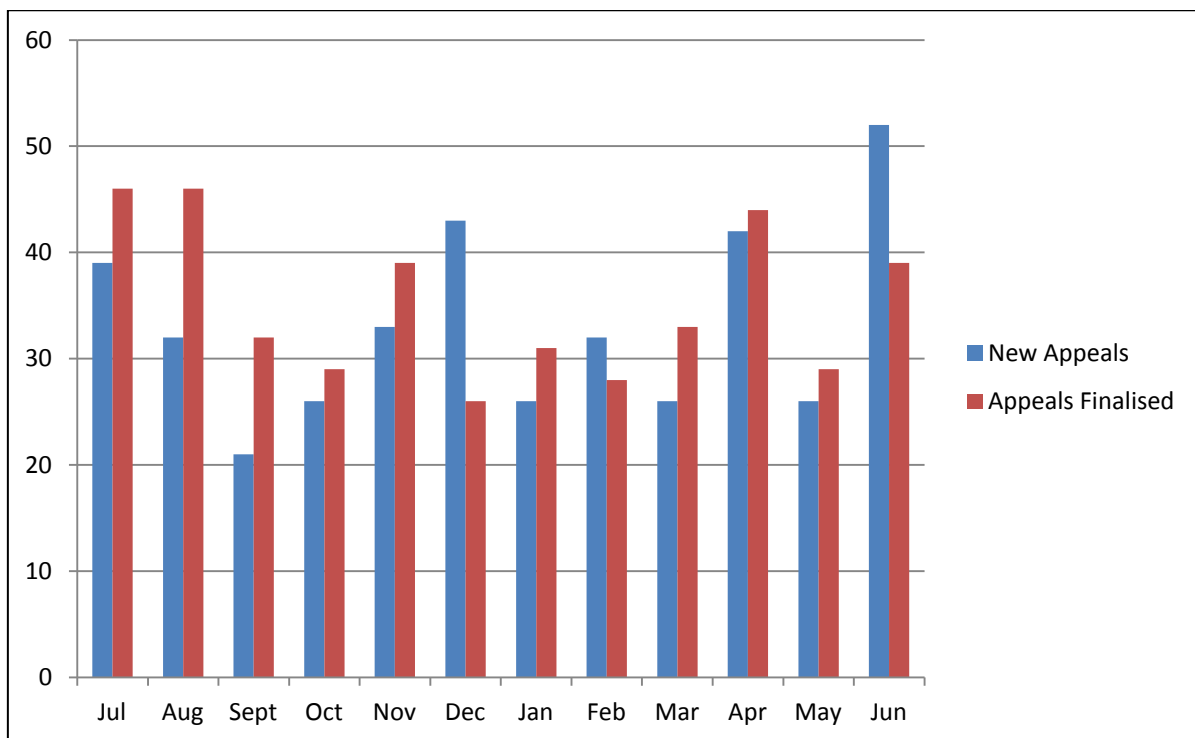
Chart D.2

Deportation (Non-resident) Decisions Released

Declined	Allowed	Total
208	92	300

Chart D.3

Deportation (Non-resident) Caseflow – by Month



REFUGEE AND PROTECTION APPEALS
1 July 2015 to 30 June 2016

Chart E.1

Refugee and Protection Appeals on Hand

Appeals on hand at start of year	New appeals	Withdrawn or invalid	Decisions released	Appeals finalised	Appeals on hand at end of year
129	152	11	147	158	123

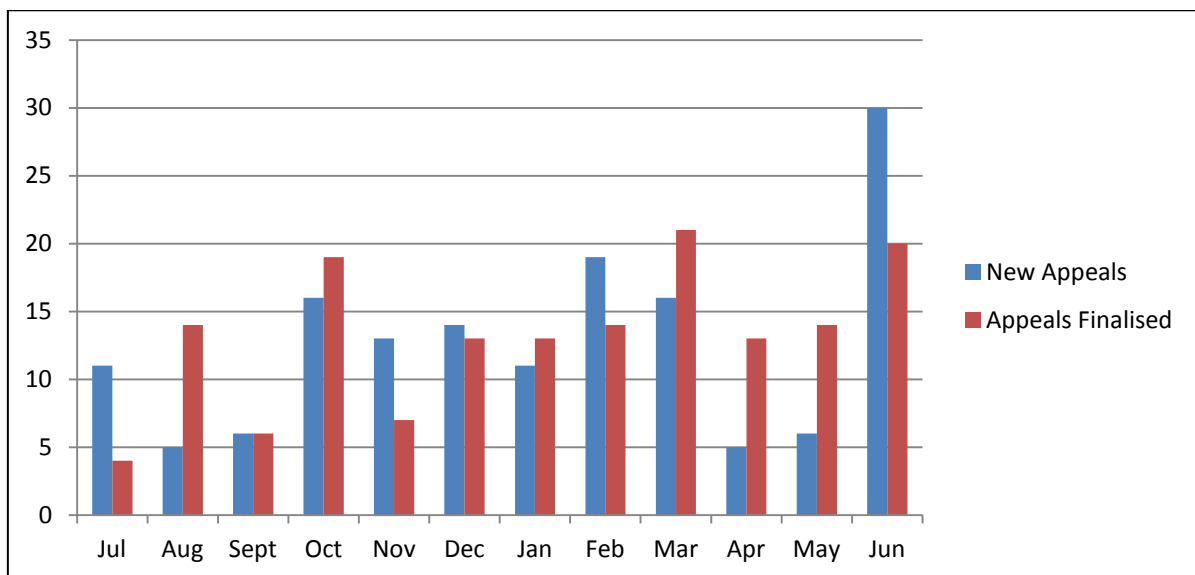
Chart E.2

Refugee and Protection Decisions Released

Declined	Allowed	Total
95	52	147

Chart E.3

Refugee and Protection Caseflow – by Month



SUMMARY OF ALL APPEALS

Chart F.1

Case Load Data by Financial Year

Year ending	Appeals on hand at start	New appeals	Withdrawn or invalid	Decisions released	Appeals finalised	Appeals on hand at end of year
June 2011	524	642	110	350	460	706
June 2012	706	1,399	280	681	961	1,144
June 2013	1,144	1,263	243	886	1,129	1,278
June 2014	1,278	1,261	287	1,179	1,466	1,073
June 2015	1,073	1,349	309	1,203	1,512	910
June 2016	910	1,193	210	1,274	1,484	619
Total to date		5,914	1,229	4,299	5,528	

Chart F.2

Outcomes of Tribunal Decisions Released by Financial Year

Year ending	Declined	Allowed	Referred to Minister	Total
June 2011	209	106	35	350
June 2012	404	224	53	681
June 2013	549	286	51	886
June 2014	700	369	110	1,179
June 2015	755	381	67	1,203
June 2016	791	401	82	1274
Total to date	3,408	1,767	398	5,573

Chart F.3

Average Number of Days from Receipt of Appeal to Release of Decision

	30 June 2013	30 June 2014	30 June 2015	30 June 2016
Tribunal Average (days)	395	364	345	257
Residence	431	334	289	271
Deportation (Non-resident)	340	429	329	133
Deportation (Resident)	501	410	706	414
Refugee and Protection	318	364	441	352

Comparative Graph Showing Average Number of Days from Receipt of Appeal to Release of Decision

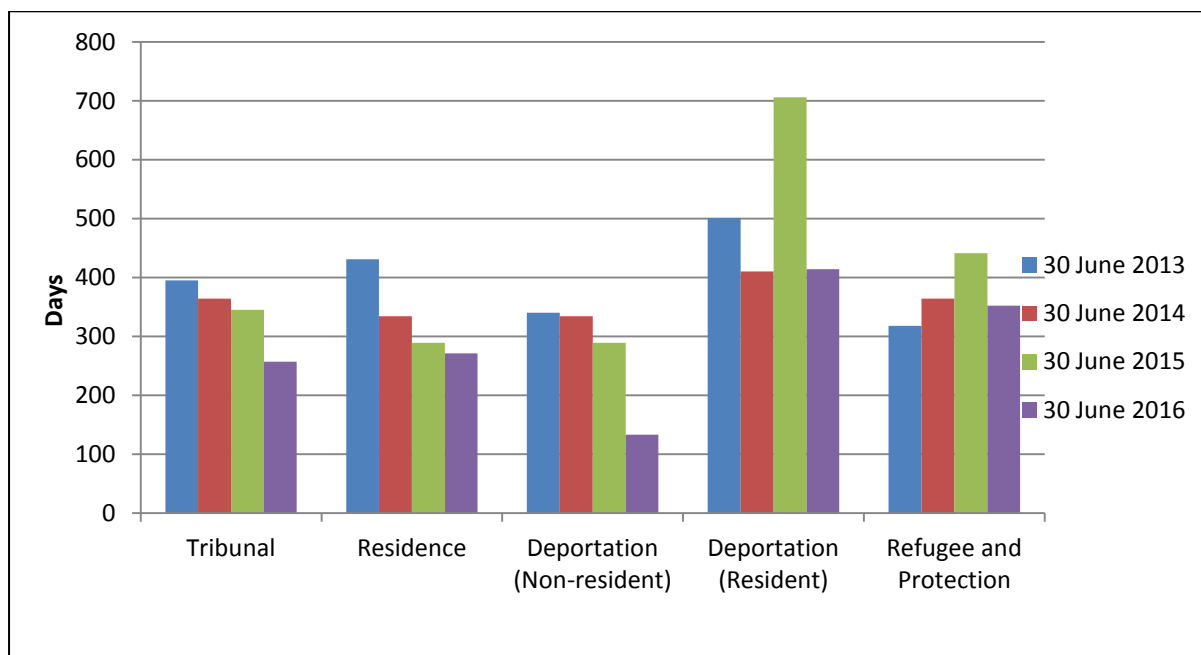


Chart F.4

Average Number of Days from Allocation or Date of Last Hearing to Release of Decision

	30 June 2013	30 June 2014	30 June 2015	30 June 2016
Tribunal Average (days)	74	55	45	32
Residence	56	46	41	30
Deportation (Non-resident)	81	61	38	27
Deportation (Resident)	135	172	65	52
Refugee and Protection	100	69	79	43

Comparative Graph Showing Average Number of Days from Allocation or Date of Last Hearing to Release of Decision

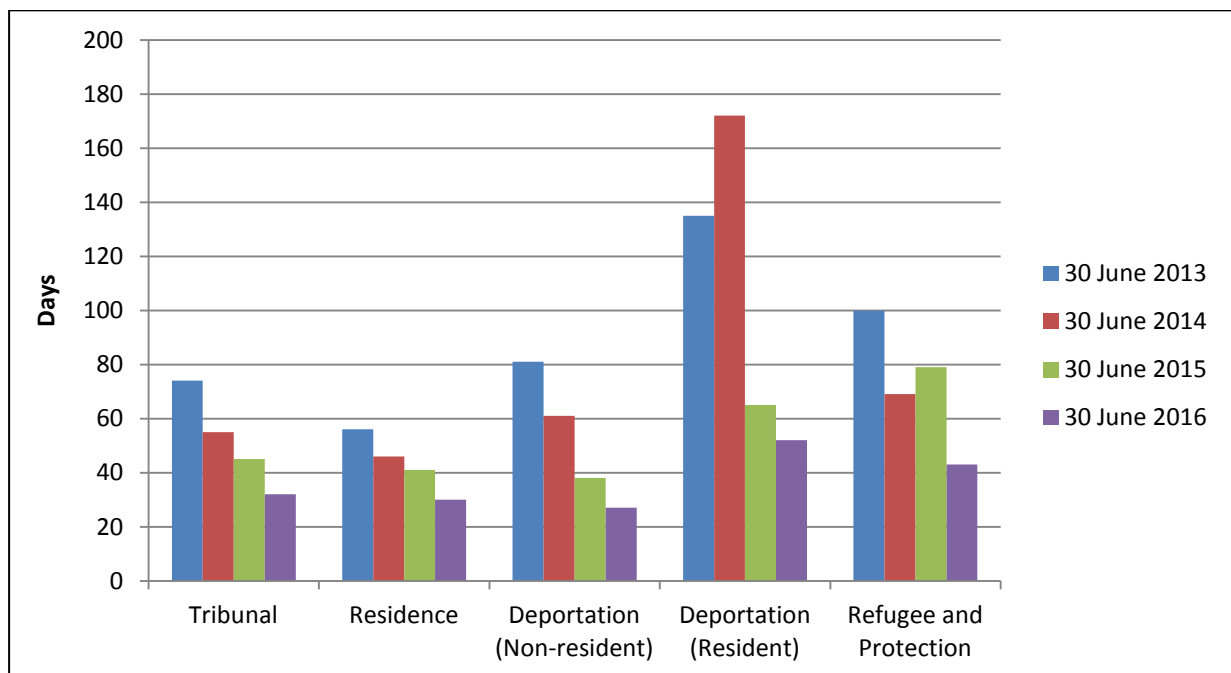


Chart F.5

Average Age (Days) of Active Appeals

	30 June 2013	30 June 2014	30 June 2015	30 June 2016
Tribunal Average (days)	247	228	208	201
Residence	240	134	173	116
Deportation (Non-resident)	228	230	184	127
Deportation (Resident)	425	425	361	500
Refugee and Protection	329	248	215	159

Comparative Graph Showing Average Age Of Active Appeals

