



Immigration and Protection Tribunal

**Annual Report
2014/2015**

Judge Peter Spiller
Chair

August 2015

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.

Though 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 fourth full annual report of the Tribunal, and covers the 12 months from 1 July 2014 to 30 June 2015.

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

Highlights

- In the past year, the Tribunal disposed of the highest number of appeals in its history (over 1,500).
- The number of appeals to the Tribunal continues to increase in the residence and deportation (resident) streams, and the overall total has risen to more than 1,300.
- Despite the increase in new appeals, the number of appeals on hand in the Tribunal is now back to levels of three years ago (just over 900, a drop of 15%).
- The number of appeals on hand in the deportation (non-resident) stream has been reduced by more than one-half.
- The timeliness of decision-making by Tribunal members has increased markedly (by 18%).
- The Tribunal has now published Practice Notes for all areas of its work.
- The Tribunal has reinstated biannual performance reviews and training for its members.

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 2015, the Tribunal consisted of the following full-time equivalent (FTE) and part-time members:

<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
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	1.0
Total FTE			16.0

The previous Chair of the Tribunal, Judge Wainwright, resigned her position in May 2014. The Deputy Chairs (Melissa Poole and Martin Treadwell) served as Acting Co-Chairs of the Tribunal until 6 October 2014. Judge Spiller then took office as the new Chair.

Deputy Chair Ms Poole resigned in September 2014. Following her resignation, the incoming Chair decided to dispense with her Deputy Chair portfolio, leaving Mr Treadwell as the sole Deputy Chair. Half of his time is devoted to judicial management functions. Ms Poole's position was filled by Ms Smallholme, who took up office as member on 29 June 2015.

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 instituted or reviewed during the past year:

Performance Appraisal of Members

After the new Chair took office in October 2014, he had an initial individual meeting with each member. From February 2015, the Chair reinstated 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 Notes

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. In June 2014, new Practice Notes were published for the residence and the deportation (non-resident) streams, and revised Notes were issued for the deportation (resident) and the refugee & protection streams. The 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 has been updated to provide appellants and their representatives with an indication of the age and range of appeals currently being considered. The website also 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 the Tribunal members for several years. New templates were published to replace the existing residence and deportation (non-resident) templates.

Internal Liaison

From November 2014, the Chair reinstated the monthly meeting of all members. Ms Donald and Ms Dingle were appointed the administration managers of the residence and deportation (non-resident) streams.

Efforts were made to foster a team spirit amongst the members and the administrative staff, and the Chair instituted a monthly tea gathering open to all 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 and Associate Minister of Immigration, the Secretary of Justice, the Deputy Secretary of Justice (Courts), the General Manager – Ministry of Justice Special Jurisdictions, members of the Ministry of Business, Innovation and Employment (two meetings), the Refugee Status Branch of Immigration New Zealand, the New Zealand Law Society and the Auckland District Law Society, the New Zealand Law Society's Wellington Branch Immigration and Refugee Law Committee, and members of the Law Commission.

The Chair gave presentations to the New Zealand Association for Migration and Investment, the Immigration Law Conference, and an Asylum Forum organised by the Refugee Status Branch. Mr Treadwell met a group of American lawyers on a Rotary exchange. Mr Molloy also spoke at the Asylum Forum organised by the Refugee Status Branch.

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

A three-day training event for all members was reinstated in November 2014. The first day was devoted to children's issues, the second day concentrated on health issues, and the third day looked at residence and then stream-related issues. In April 2015, there was a visit by former colleague Michael Timmins, who had recently returned after spending a year as an expert consultant for the UN Human Rights Commission in Pakistan. In May 2015, the Tribunal hosted (with Ministry support) the world-renowned expert on refugee law, Professor Jim Hathaway of Michigan University, who conducted a day-long seminar.

Professional Development

The biannual performance review meetings (noted above) are designed to support the professional development of members.

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, attend conferences and give conference presentations, and liaise with relevant bodies and persons overseas. Many of these attendances are self-funded by members. Messrs Martin and Fuiava attended the COAT conference in Sydney. Mr Treadwell attended and spoke at the 10th biennial world conference of the International Association of Refugee Law Judges in Tunisia; the UNHCR "Expert Roundtable on Credibility Assessments" in Budapest, as the New Zealand representative; a refugee conference in Canada; and the COAT conference in Melbourne. Mr Molloy spoke at a Nordic Asylum Law Seminar in Sweden. Mr Burson attended a number of meetings on natural disasters, climate change and human mobility in Europe; a conference held at the Kaldor Centre for International Refugee Law at the University of New South Wales; and an International Law Association meeting.

From October 2014, a monthly newsletter was issued, providing members and administrative staff with information on the Tribunal and its performance, and attaching a summary of relevant recent decisions and upcoming events in New Zealand and overseas.

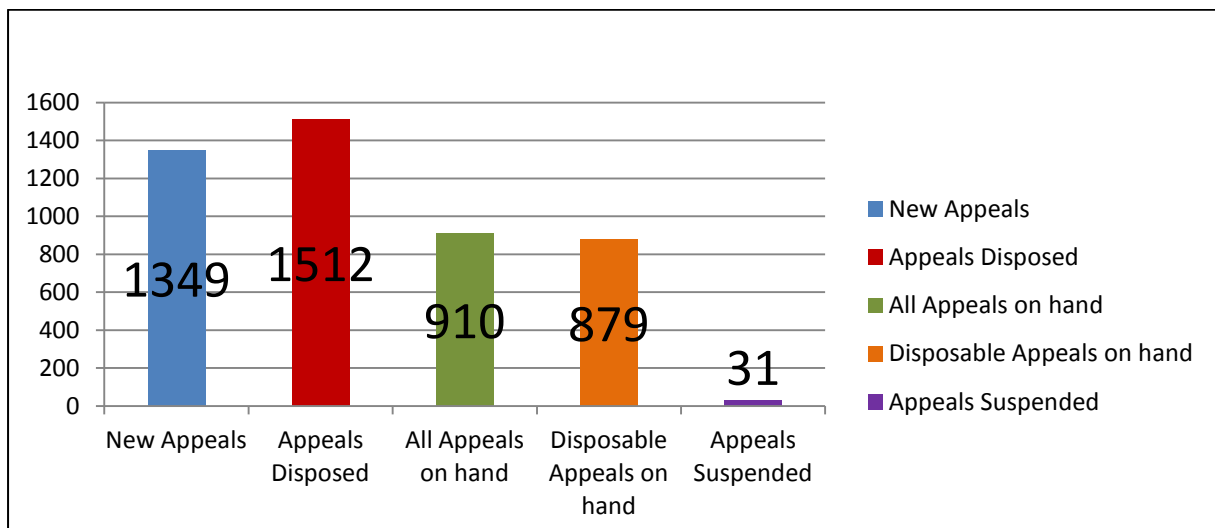
Number and Disposal of Appeals in the Tribunal

The Tribunal started the 2014/2015 year with 1,073 appeals on hand, and accepted 1,349 new appeals (89 more than in the previous year). The progress of the Tribunal in its work was hampered by the absence of a Chair for the first three months, an unfilled vacancy for nine months, the absence on long leave of two members, and the processing of a lengthy refugee case in late 2014.

In the 2014/15 year, the Tribunal finalised 1,512 appeals, comprising 1,203 decisions and the rest being withdrawn or determined to be invalid. This is a record number of disposals in the Tribunal's history, and compares favourably with the Tribunal's performance in the previous year (1,466 disposals, including 1,179 decisions).

Overall, despite the increase in the number of appeals received and certain adverse factors (noted above), the Tribunal reduced the number of appeals on hand to 910 appeals (a reduction of 15%). This is the lowest level of appeals on hand since 2012. Of these appeals, 31 are 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 notice. The Tribunal therefore has a total of 879 disposable appeals on hand.

Number of appeals 2014/2015



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 provisions as deportation (resident) appeals. The number of appeals in this stream is low, with two matters heard in the past year and one matter remaining on hand.

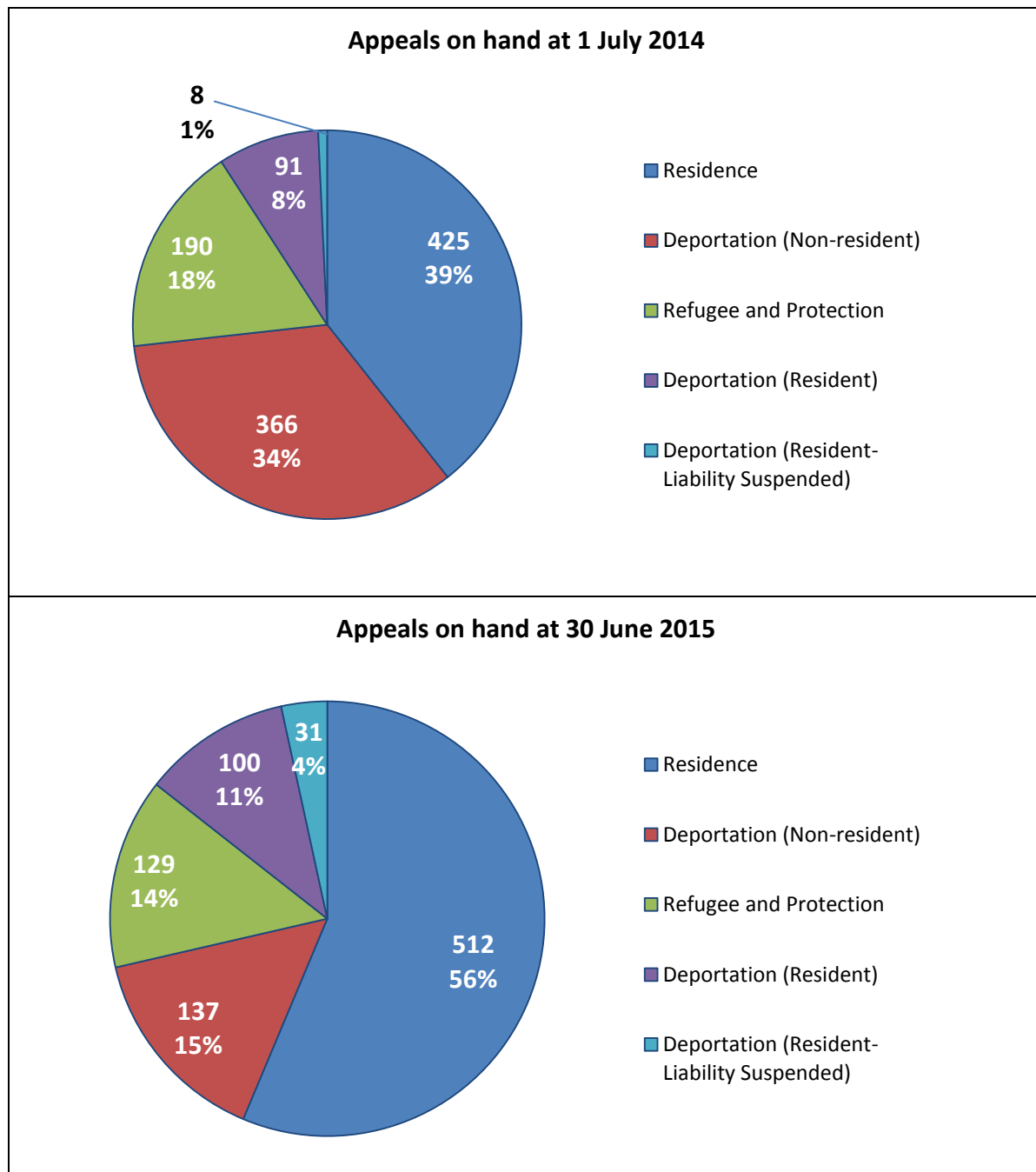
During the past year there has been a significant change in the proportion of work across the streams. The Tribunal began the year with 39% of its appeals on hand being residence appeals, 34% deportation (non-resident) appeals, 9% deportation (resident) appeals, and 18% refugee & protection appeals. The Tribunal ended the year with 56% of its appeals on hand being residence appeals, 15% deportation (non-resident) appeals, 15% deportation (resident) appeals, and 14% refugee & protection appeals.

The most significant change has been the decline in the percentage of deportation (non-resident) appeals on hand (a decline of more than half). This decline was the result of a concerted effort to reduce the backlog in this stream, and there was also a slight decline (by 9%) in the number of new appeals being lodged compared with the previous year. The result was that, whereas in October 2014 there were appeals in this stream that had been lodged up to 18 months before their decision, by the end of the court year appeals in this stream were being decided on average within 3 months or less of lodging. This is the model for the other streams to follow.

The decline in the percentage of refugee & protection appeals (by 4%) was the result of greater resources being devoted to this stream and also a decline in the number of new appeals compared with the previous year (by 17%).

The rise in the percentage of residence appeals (by 17%) was the result of a rise in the number of new appeals (by 9%). (The percentage of residence appeals was also affected by the shrinkage in the proportion of deportation (non-resident) appeals.) Of residence appeals, around two-thirds are in the Skilled Migrant category. Residence appeals constitute by far the biggest proportion of the Tribunal's work, and so extra resources have been devoted to this stream in the coming year.

The rise in the percentage of deportation (resident) appeals (by 6%) was the result of a significant increase in the number of new appeals compared with the previous year (up 55 (117%)). In particular, there were 23 appeals lodged where deportation liability has been suspended by the Minister. The Tribunal has a growing number of such appeals on hand, and extra resources have been devoted to this stream in the coming year.



Timeliness of Tribunal Decision-making

The expeditious despatch 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, and despatch 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 19 days compared with the previous year. The average time taken by members from allocation of their file (in the paper-based streams) or last hearing (in the hearing-based streams) has been reduced by 10 days (from 55 to 45). The average age of active appeals has been reduced by 20 days (from 228 to 208 days).

The most significant progress has been evident in the deportation (non-resident) stream. Here the period from receipt of appeal to release of decision has been reduced by 80 days (to 329 days), the time from allocation of the file to release of the decision has reduced by 23 days (to 38 days), and the average age of active appeals has declined by 46 days (to 184 days).

The time taken to process deportation (resident) appeals is often determined by factors beyond the Tribunal's control. This is 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 appellant'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.

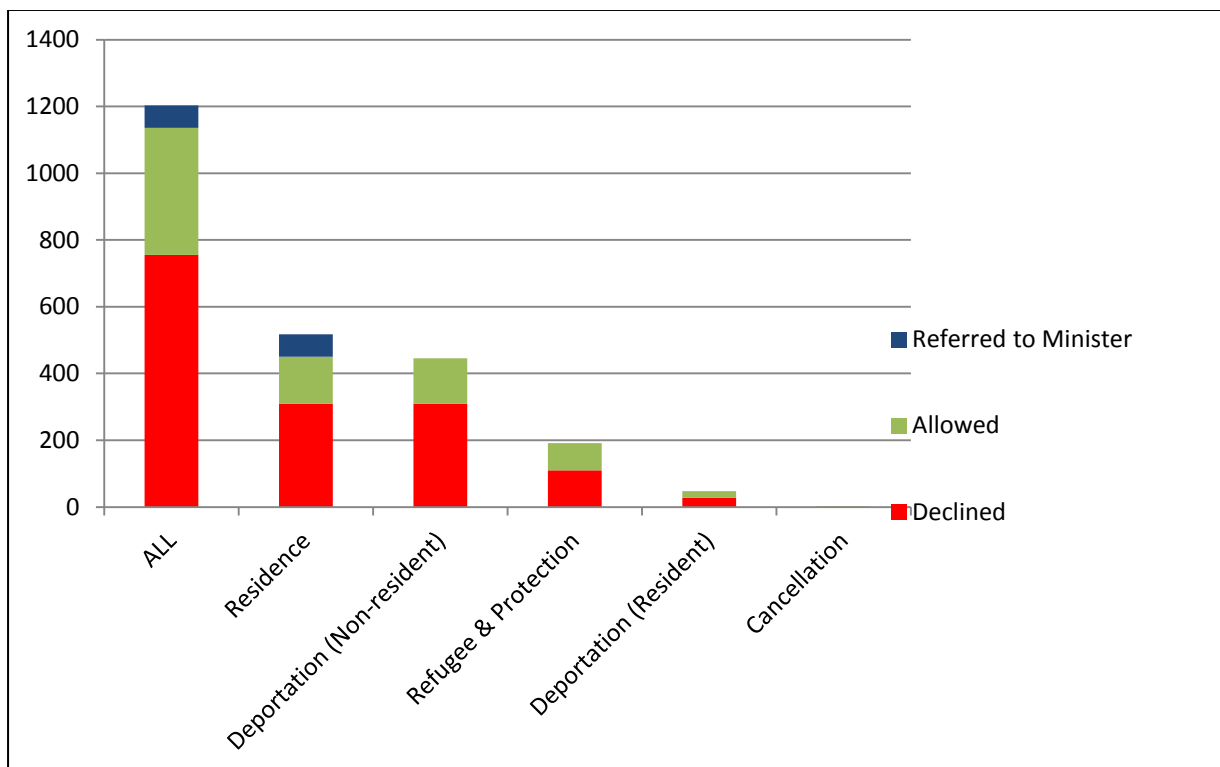
See chart F.3; F.4; F.5 pages 23–25

Outcomes of Appeals in the Tribunal

Of the decisions released by the Tribunal in the past year, 63% resulted in the appeal being declined, 31.5% appeals were allowed, and 5.5% (all in residence cases) were referred to the Minister. The percentage of appeals declined in the previous court year was 60%, while 31% were allowed and 9% were referred to the Minister.

The highest number of appeals declined were in the deportation (non-resident) stream (69%), followed by the residence stream (60%), the refugee & protection stream (58%), and the deportation (resident) stream (56%).

Outcome of appeals



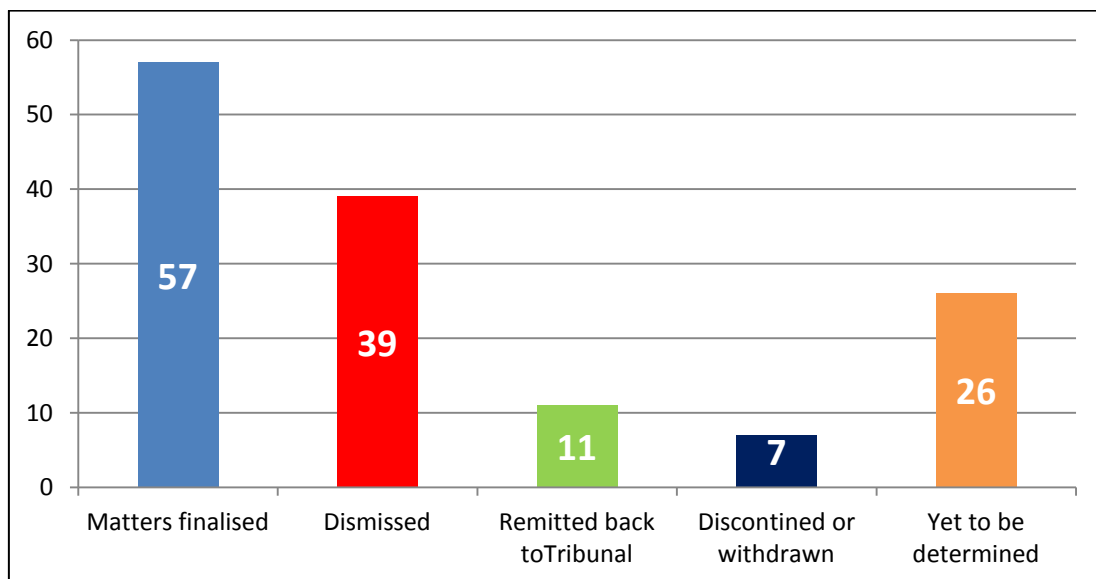
Judicial Reviews/Appeals

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 26 appeals and/or judicial review applications lodged in the High Court. These constituted 2% of the Tribunal's 1,203 decisions produced in that period. This compares with 21 appeals (2%) in the previous year and a total of 87 (2%) of all decisions produced since the Tribunal commenced.

Of the 57 appeals/applications for review determined by the higher courts since the Tribunal's inception, 39 have been dismissed (68%) and only 11 have been allowed (19%). A further 7 have been discontinued or withdrawn. Twenty-six matters are yet to be determined.

Matters appealed to higher courts since Tribunal's inception



Acknowledgements

I record my appreciation to the members of the Tribunal for their collegial spirit, professionalism and productivity. 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 and Michelle Williams. 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 2014 to 30 June 2015

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
1,073	1,349	309	1,203	1,512	31	879	910

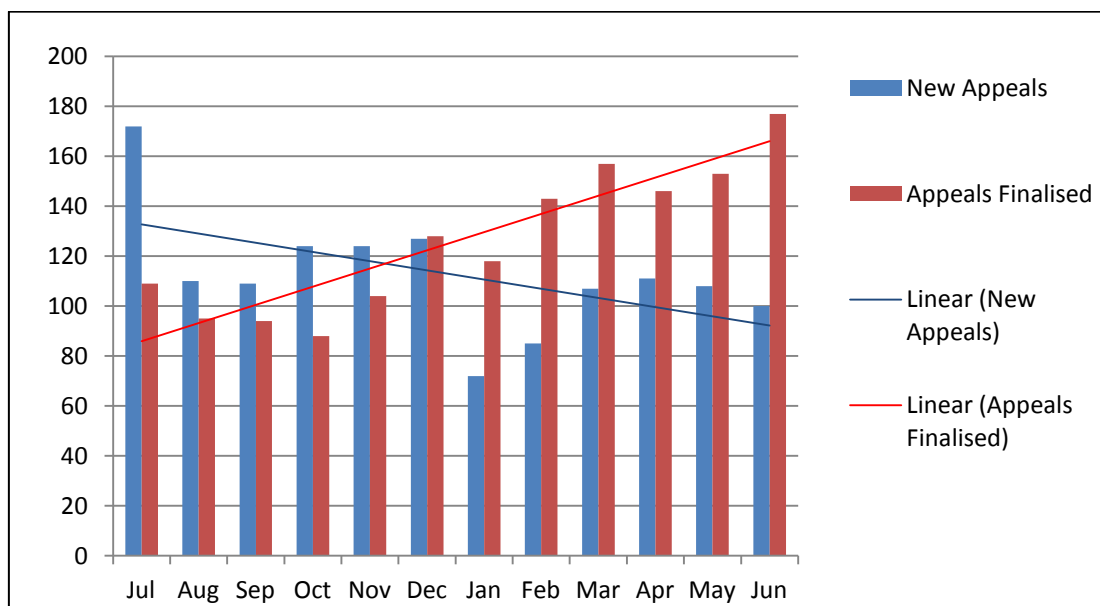
Chart A.2

Total Tribunal Decisions Released

Declined	Allowed	Referred to Minister	Total
755	381	67	1,203

Chart A.3

Total Tribunal Caseflow – by Month



RESIDENCE APPEALS
1 July 2014 to 30 June 2015

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
425	645	41	517	558	512

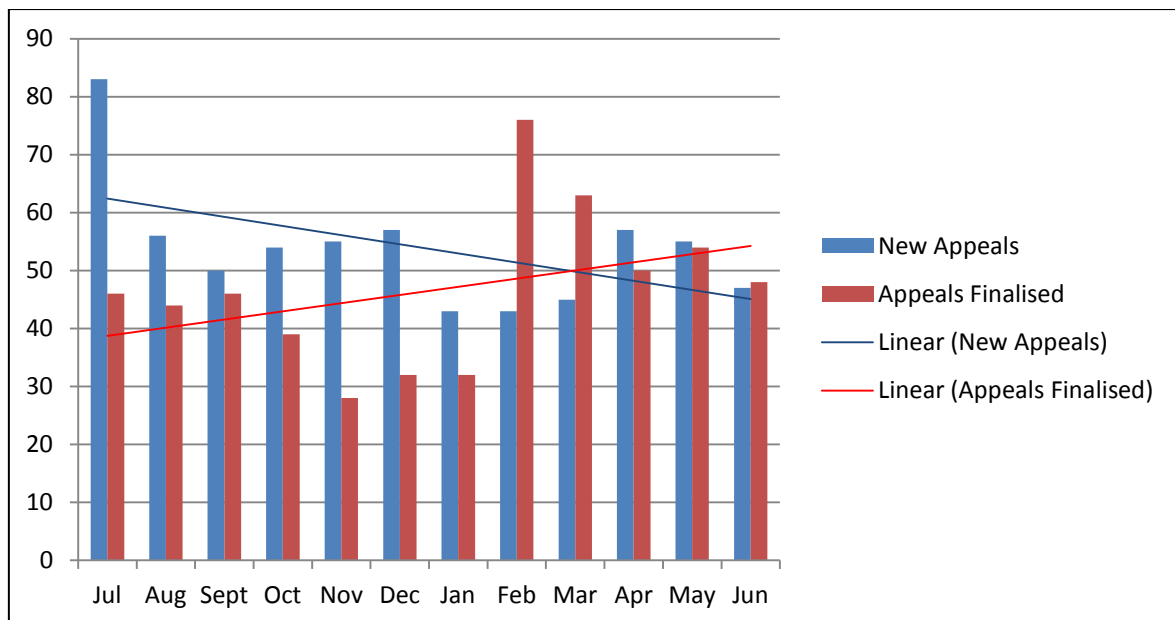
Chart B.2

Residence Decisions Released

Declined	Allowed	Referred to Minister	Total
309	141	67	558

Chart B.3

Residence Caseflow – by Month



DEPORTATION (RESIDENT) APPEALS
1 July 2014 to 30 June 2015

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	Disposible appeals on hand at end of year	Total appeals on hand at end of year
91	102	14	48	62	31	100	131

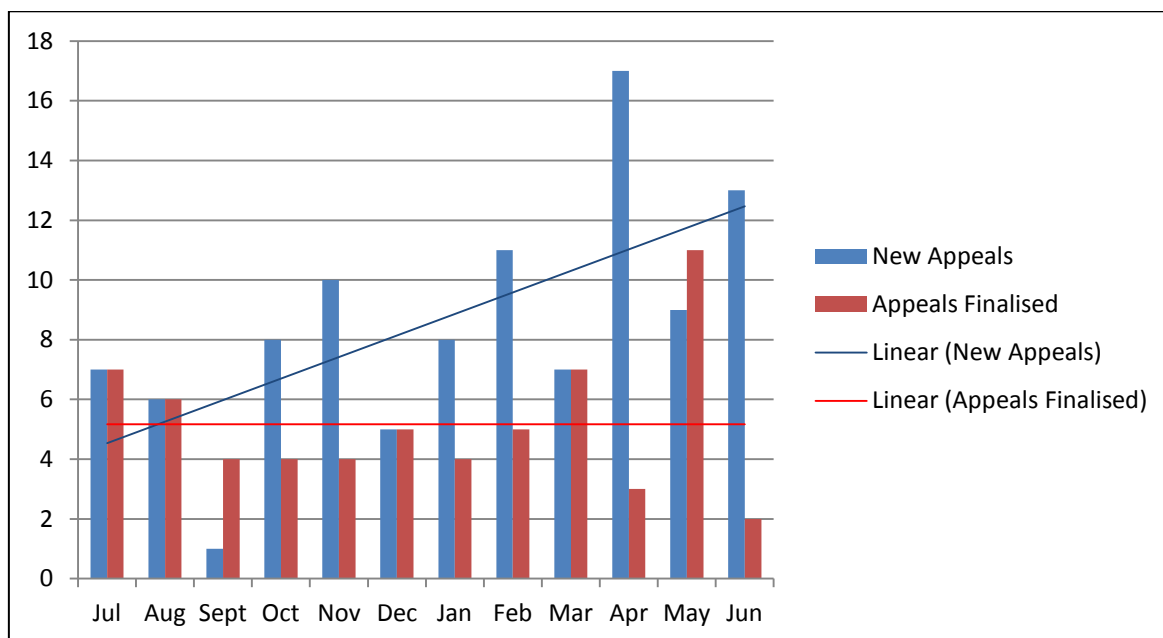
Chart C.2

Deportation (Resident) Decisions Released

Declined	Allowed	Total
27	21	48

Chart C.3

Deportation (Resident) Caseflow – by Month



DEPORTATION (NON-RESIDENT) APPEALS
1 July 2014 to 30 June 2015

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
366	448	232	445	677	137

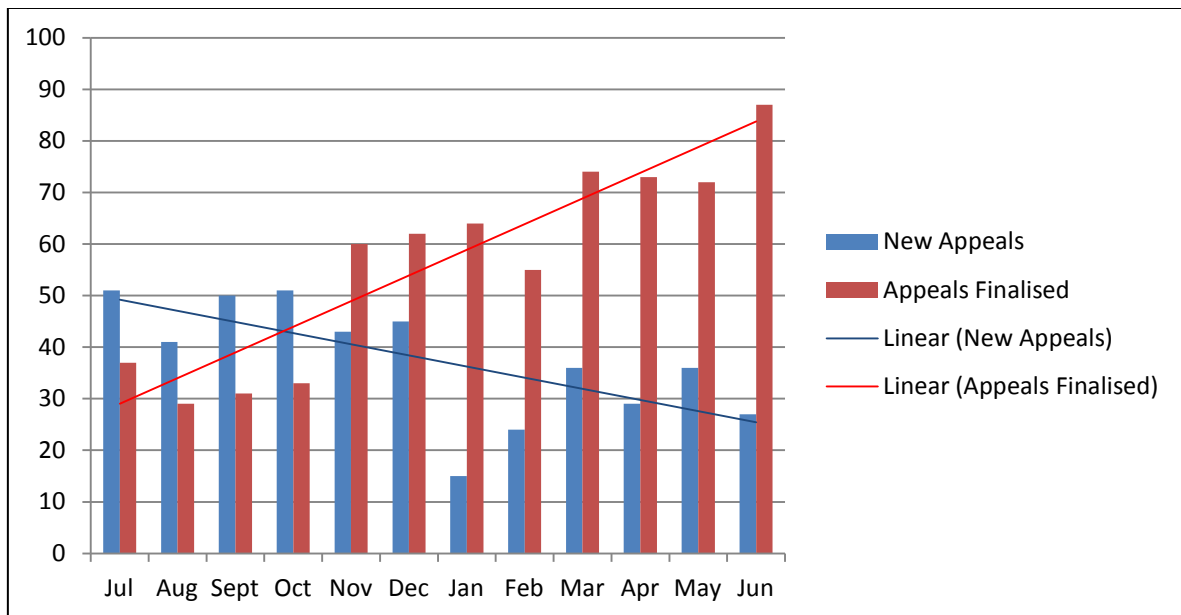
Chart D.2

Deportation (Non-Resident) Decisions Released

Declined	Allowed	Total
309	136	445

Chart D.3

Deportation (Non-resident) Caseflow – by Month



REFUGEE AND PROTECTION APPEALS
1 July 2014 to 30 June 2015

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
190	150	20	191	211	129

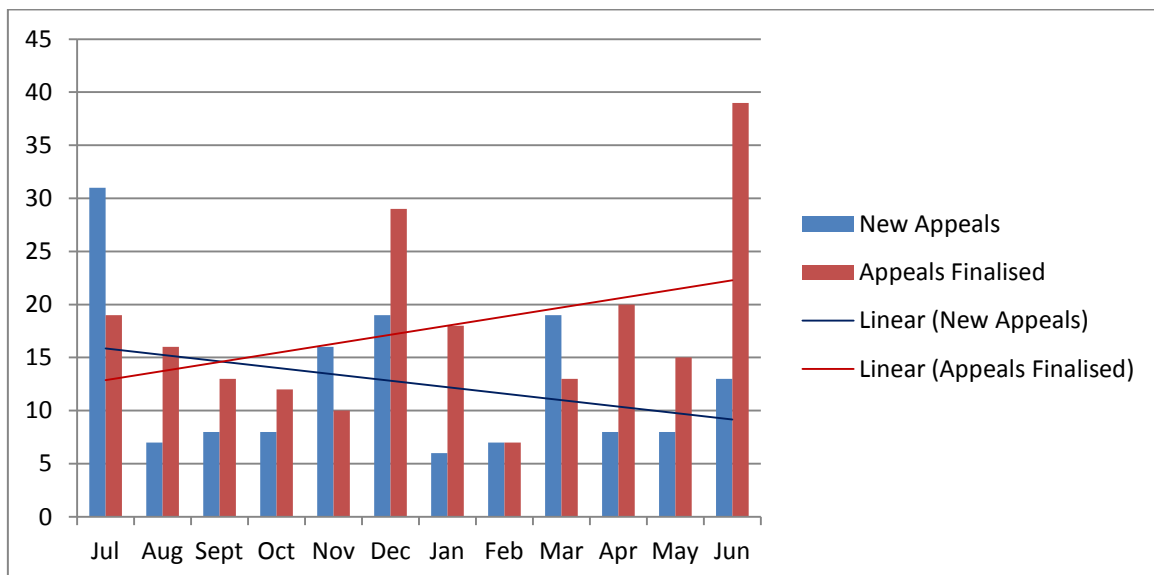
Chart E.2

Refugee and Protection Decisions Released

Declined	Allowed	Total
110	81	191

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
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
Total to date	2,617	1,366	316	4,299

Chart F.3

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

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

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

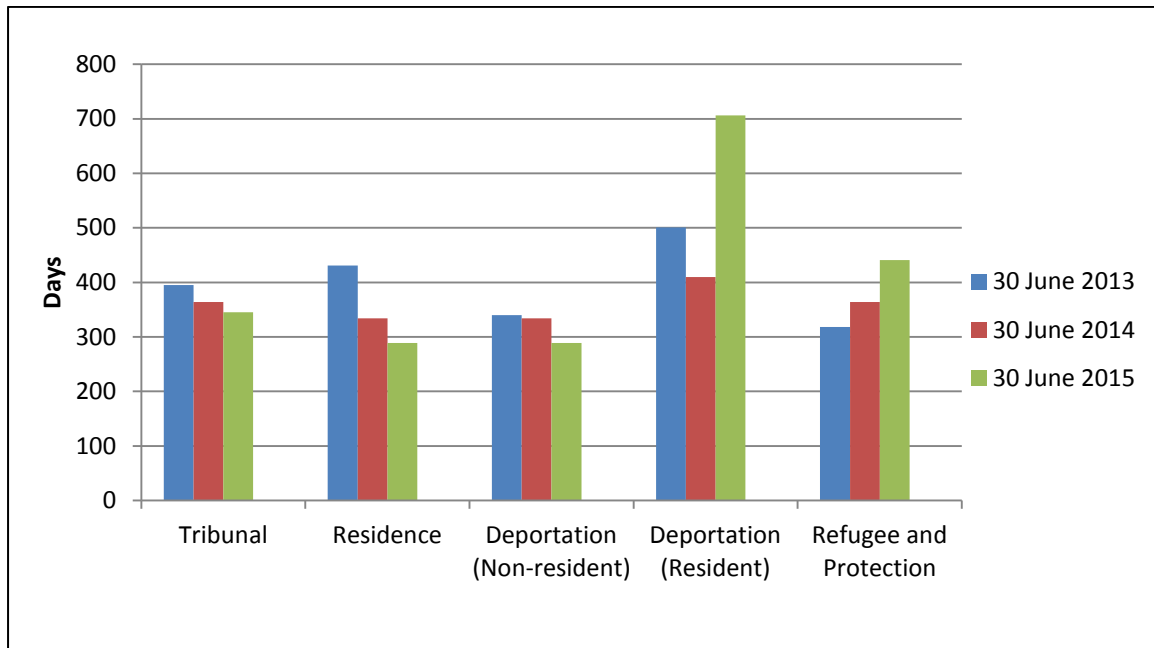


Chart F.4

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

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

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

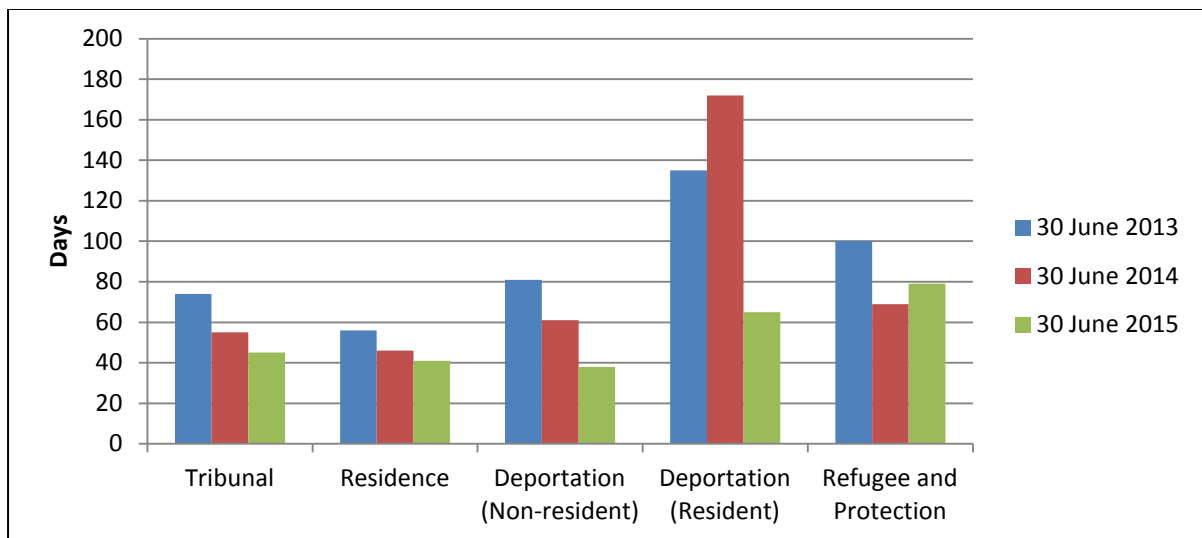
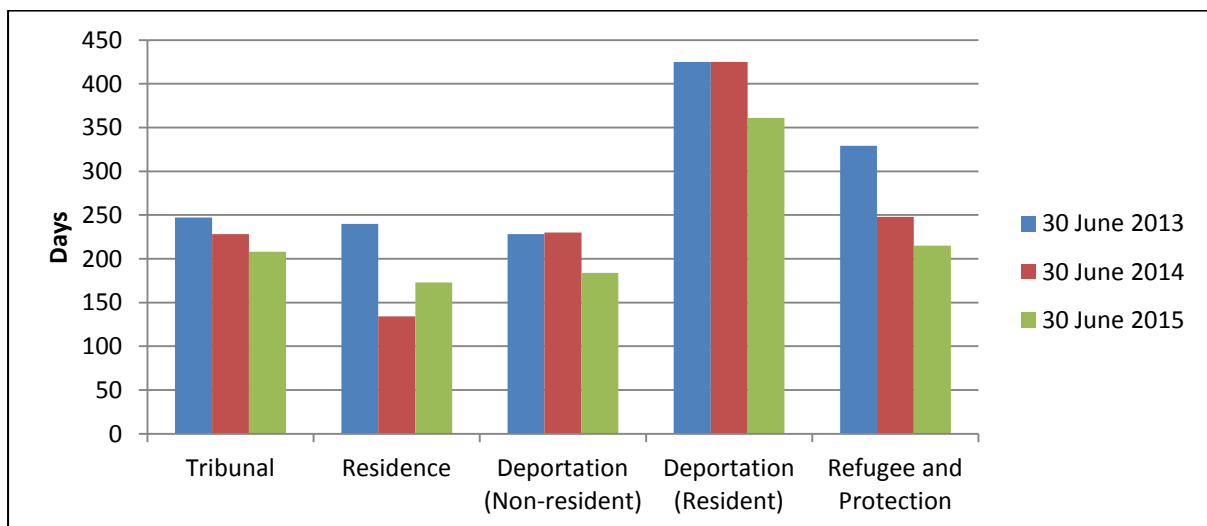


Chart F.5

Average Age (Days) of Active Appeals

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

Comparative Graph Showing Average Age of Active Appeals



Charts showing caseload data by appeal stream and by financial year

