

The Auditor-General
Audit Report No.44 2006–07
Performance Audit

Management of Tribunal Operations—Migration Review Tribunal and Refugee Review Tribunal

Australian National Audit Office

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of Australia 2007

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Canberra ACT
14 June 2007

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in the Migration Review Tribunal and Refugee Review Tribunal in accordance with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit and the accompanying brochure to the Parliament. The report is titled *Management of Tribunal Operations—Migration Review Tribunal and Refugee Review Tribunal*.

Following its tabling in Parliament, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee', is positioned above the printed name.

Ian McPhee
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office. The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Abbreviations/Glossary

AAT	Administrative Appeals Tribunal
ANAO	Australian National Audit Office
APS	Australian Public Service
DIAC	Department of Immigration and Citizenship
DIMA	Department of Immigration and Multicultural Affairs
Finance	Department of Finance and Administration
JMB	Joint Management Board
MRT	Migration Review Tribunal
PAES	Portfolio Additional Estimates Statements
PMD	Principal Member Direction
PBS	Portfolio Budget Statements
RRT	Refugee Review Tribunal
SMG	Senior Management Group
TIS	Translating and Interpreting Service
UN	United Nations

Summary and Recommendations

Summary

Background

1. The travel to, entry and stay in Australia of people who are not Australian citizens is regulated by a visa system. The *Migration Act 1958* and Migration Regulations 1994 provide the statutory framework for the grant and cancellation of these visas. This legislation is administered by the Department of Immigration and Citizenship (DIAC),¹ which makes the primary decisions to grant or refuse, and to cancel visas in particular cases. Some types of decisions that are unfavourable to visa applicants or holders are reviewable.
2. The Migration Review Tribunal (MRT) and the Refugee Review Tribunal (RRT) are statutory bodies which provide independent merits review of certain general visa decisions and protection visa decisions of DIAC officers. 'Merits review' involves administrative reconsideration of the subject matter of the case. The Tribunals have the power to affirm, vary or set aside a decision under review, remit a matter for reconsideration, or substitute a new decision.
3. While the *Migration Act 1958* provides for the MRT and the RRT as two separate agencies, these Tribunals now operate closely together to achieve administrative efficiencies. In particular, the Principal Member and the Registrar hold dual appointments in both Tribunals. The MRT and the RRT also have joint governance arrangements, including a Joint Management Board, and became a single entity for financial management purposes in 2006.
4. The Tribunals have Registries in Sydney (the Principal Registry) and Melbourne. They now have shared office facilities and common support services. Review cases are considered and decided by individual Tribunal Members, with assistance from staff organised into support services and case teams. Members and staff are now cross-appointed to both Tribunals.
5. Performance information on case processing and decision-making is reported to Tribunal senior management and also to the Parliament, through Annual Reports. The Tribunals have had a strong focus on achieving a high volume of annual case finalisations, improving the timeliness of case processing, and meeting case productivity targets set for Tribunal Members.

¹ Prior to 30 January 2007, the Department of Immigration and Multicultural Affairs (DIMA). Where appropriate in this report, the abbreviation DIAC/DIMA is used.

6. Client services provided by the Tribunals include forms and guidance for review applicants; Registry operations to process applications and to support the conduct of hearings into review cases; and complaints handling mechanisms to deal with applicants dissatisfied with service provision. Tribunal service charters have set out service commitments for client services.

Audit objective and scope

7. The objective of the audit was to assess the effectiveness of the Tribunals' management of their operations. To this end, the audit examined whether the MRT and the RRT:

- have achieved intended operational efficiencies from the introduction of common facilities, services and resourcing;
- have established appropriate arrangements for governance, business planning and guidance of Members and staff, and for performance monitoring and reporting of Tribunal operations;
- finalise cases within Tribunal time and productivity standards; and
- provide applicants with services in accordance with service standards.

8. The audit covered Tribunal operations for review of visa decisions. The correctness of individual decisions was not assessed as part of the audit.

9. The audit focused particularly on developments in the Tribunals' management performance in the four year period from 2001–02 to 2004–05.

Overall conclusion

10. The ANAO concluded that the MRT and the RRT were effectively managing their operations.

11. The Tribunals successfully implemented a series of proposals since 2001 to achieve operational efficiencies from the introduction of common facilities, services and resourcing. However, efficiency gains achieved from these initiatives were not clearly assessed.

12. The Tribunals also established sound governance arrangements for their operations, through the establishment of joint management structures, the development of risk management and fraud control plans, and an improved funding arrangement with Finance.

13. The Tribunals had in place an adequate set of performance indicators to monitor and report on their case processing and decision-making performance. However, their actual performance results from 2001–02 to 2004–05 were mixed. Annual case finalisations were above target in most years, but the Tribunals did not meet targets for case processing times and Member productivity in 2004–05.

14. Applicants had access to a range of services, including forms and guidance, interpreter and other assistance for clients with particular service needs, and complaints handling mechanisms. While the Tribunals had service standards in their service charters, they did not adequately report against them in their Annual Reports.

15. The ANAO identified scope for the Tribunals to improve management performance in several areas, particularly by strengthening operational planning and the design and reporting of performance information, and by enhancing client service communication, delivery and assessment.

16. In particular, the Tribunals' capability in the planning and coordination of future organisation change and in the monitoring and reporting on ongoing performance would be improved by the development of an annual operational plan and the preparation of an annual performance information framework.

17. Clearer reporting of the Tribunals' performance results against targets or previous results, and the relative contribution of the Tribunals to overall decision-making in relation to general and protection visas, would strengthen the accountability of the Tribunals. Internal management reporting would also be enhanced by the introduction of an overarching 'balanced scorecard'-type management report covering all major aspects of case processing.

18. There are opportunities for the Tribunals to enhance various aspects of client services, to improve service performance and to assess service quality. In particular, the wider promotion of the Tribunals' new service charter would help increase review applicants' awareness of their rights as well as their responsibilities. The conduct of regular surveys of applicants and their representatives would also provide the Tribunals with useful information on their satisfaction with services and desire for particular service improvements.

19. The ANAO made five recommendations in relation to the areas for improvement mentioned above. The Tribunals agreed with all five recommendations.

Key Findings

Operational alignment of the Tribunals (Chapter 2)

20. Since 2001, the Tribunals have progressively aligned their operations. They now operate administratively as a single organisation, through joint governance arrangements; integrated corporate management and research functions which service both Tribunals; co-located Registries in Sydney and Melbourne, and cross-appointed Members and staff.

21. The Tribunals effectively planned and managed the implementation of efficiency initiatives, in accordance with Government intentions for closer cooperation between the Tribunals to achieve administrative efficiencies. Proposals identified by the Tribunals to align their operations were successfully implemented during the period from 2001–02 to 2004–05. However, efficiency gains achieved from these initiatives were not clearly assessed. The Tribunals could enhance their accountability for the management of future major initiatives, through improved reporting on the achievement of planned objectives and the extent of realisation of efficiencies from such initiatives.

Governance, risk assessment, planning, resourcing and guidance (Chapter 3)

22. The governance arrangements of the Tribunals for case processing and case decision-making operations were sound in most respects. In particular, the Tribunals' management structures were operating satisfactorily, and appropriate arrangements for consultation with stakeholders were in place. A risk management plan and a fraud control plan had been developed to deal with risks to operations. The Tribunals' funding arrangement with Finance had been based on solid preparatory work, and provided the Tribunals with a more assured resourcing base than had existed under previous agreements.

23. The Tribunals had a new joint corporate plan that included appropriate elements, albeit at a high level. However, the Tribunals did not have a separate annual operational plan for their business activities and initiatives. The development of an annual operational plan and the preparation of an annual performance information framework would enhance the Tribunals' capability to plan and assign responsibilities for business initiatives and to monitor and report on performance.

24. The Tribunals had in place a wide range of operational policies and procedural guidance, to assist Members in case processing and decision-making. Key guidelines covered the general conduct of reviews and arrangements for the allocation of casework to Members. A Code of Conduct also set out the ethical standards expected of Members in the course of their appointment. On-line guidance on case processing procedures is now available to Registry staff who previously did not have authoritative and up-to-date guidelines. Notwithstanding these positive features of Tribunal procedural guidance, Members and staff would benefit from the issue of an overview guide which described the various types of guidance in force.

Performance indicators (Chapter 4)

25. The Tribunals had an adequate set of performance indicators for measuring their case processing and decision-making performance. The indicators were published in their PBS, set out in their funding agreement with Finance, specified in operational policies or contained in management reports.

26. These performance indicators provided coverage of the main aspects of the Tribunals' operational performance. These aspects included: the cost of operations; the volume of case finalisations; unit cost targets; case processing priorities; and the timeliness of case processing. The productivity of Members; the level and outcome of judicial reviews; and the level of complaints from review applicants and their representatives were also covered.

27. Consistent with sound business practice, targets were set for a number of these performance indicators, including the cost of operations; case finalisations; unit costs; processing times; and Members' productivity. However, there was scope to set targets or other bases for comparison for other performance indicators, such as complaints and appeals against decisions. Additional targets would provide the Tribunals with a clearer basis for assessing their business performance and the quality of services provided to applicants.

28. Most targets were reviewed on at least an annual basis. However, time targets for MRT cases had not been reviewed for at least five years. Most MRT time targets were also set at unrealistic levels, and there would be merit in the MRT setting more achievable, interim time targets, for at least the short-term.

29. Targets for case finalisations and unit costs had been prepared by the Tribunals, having regard to factors such as trends in case lodgements; the increasing complexity of caseload; and the establishment costs of major

Tribunal initiatives. However, there was not adequate analysis of trends in the complexity of national caseload and Member productivity performance, in operational policies setting out productivity targets for the Tribunals.

30. At a strategic level, the Tribunals' outcomes and outputs frameworks which were set out in their PBS required strengthening. The Tribunals' current effectiveness indicator for measuring their contribution to outcomes was not clearly defined, and sufficiently comprehensive performance indicators by which their contribution could be measured had not been identified. The Tribunal 'set aside' rate of DIAC/DIMA decisions could be used as one effectiveness indicator, additional to the outcome of judicial review of Tribunal decisions, for assessing the Tribunals' contribution to correct and preferable visa-related decisions. In addition, targets or other bases for comparison for all quality indicators for the Tribunals' outputs should be published in their PBS, to reinforce the commitment of the Tribunals to improved service delivery and to assist PBS users to assess the Tribunals' actual operational performance.

Reporting on performance (Chapter 5)

31. The Tribunals report externally on their performance each year, mainly through their Annual Reports. A range of performance information is provided on their case processing operations, including some information relating to performance indicators in their outcomes and outputs frameworks.

32. The Tribunals did not effectively use their Annual Reports to report on the impact of their outputs-independent merits review of visa-related decisions-on desired outcomes, and their relative contribution to outcomes. A stronger Tribunal focus on the reporting of the effectiveness of Tribunal performance in terms of outcomes is crucial, for accountability purposes.

33. The Tribunal Annual Reports included considerable information on their output performance results and made extensive use of charts and tables, to present this information for report users. However, there is scope to strengthen the quality of several areas of Tribunal performance reporting. Performance results, such as case finalisation and case timeliness performance, were not reported against PBS targets which were specified in their outcomes and outputs frameworks. More analysis of factors which had affected performance results in the current year would assist report users to interpret the Tribunals' operational performance. In addition, the Tribunals did not clearly articulate through their Annual Reports whether output performance had been satisfactory, relative to targets or previous performance results. As a

result, Annual Report users would not obtain a clear and comprehensive view of Tribunal operational performance from the information provided.

34. For internal management purposes, the Tribunals had a structured set of internal reports, which were provided to senior management each month. This frequency of reporting met the performance needs of the Tribunals. The reports covered most relevant areas and aspects of Tribunal performance, including case processing volumes, case outcomes, and processing timeliness. However, the utility of internal reporting would be strengthened by introducing a 'balanced scorecard'-type management report, which would provide Tribunal senior management with a concise overview of all major aspects of case processing. This type of overarching management report is a widely accepted business tool for highlighting areas of less satisfactory operational performance which require timely management action. In addition, the adoption of common formats, across both Tribunals and both Registries, for all management reports on particular areas of performance would help Tribunal management to interpret performance trends.

35. The Tribunals achieved mixed performance results in a number of areas from 2001–02 to 2004–05. Actual case finalisations were above target in most years, but unit costs were generally outside targets. Over the same period, the processing times of finalised cases improved, and the age of cases on hand was reduced. Notwithstanding these improvements, the Tribunals did not meet their time targets for case processing in 2004–05. The processing of permanent business visa refusals and student cancellations, where processing times had not improved since 2001–02, particularly required management attention.

36. Tribunal Member productivity was below target in 2004–05, especially for the MRT. The lower productivity of Members who commenced on MRT casework during the year contributed to the MRT performance result. There would be merit in setting a series of graduated productivity targets for such Members, who require time to become as productive as experienced Members.

Client services to applicants (Chapter 6)

37. Tribunal client services included the provision of forms and supporting guidance to help applicants and their representatives to lodge review applications; the operation of Registries to process applications and to support the conduct of hearings into review cases; and the availability of complaints handling mechanisms to deal with applicants dissatisfied with service

provision. Tribunal service commitments for their range of client services were set out in service charters issued in 2001 and updated in 2006.

38. Notwithstanding the considerable changes to Tribunal operations since 2001, the service charters were not reviewed and updated at regular intervals. The Tribunals also did not consult openly with client and community stakeholders in the course of preparing their new joint charter. Periodic future review of the charter in consultation with stakeholders would help ensure that it remains relevant to clients.

39. The Tribunals promoted the messages of their previous charters to applicants, Members and staff, by a variety of means. However, there would be benefit in the Tribunals pursuing some further means of informing clients about the charter, including mail-outs of a brochure to all applicants and the display of charter signage in client areas of Registries. Increased promotion of the charter would increase awareness of client rights and responsibilities.

40. Although the Tribunals were required to report on their service performance against service standards contained in their charters, this had not been done for most service standards in recent Annual Reports. It would be appropriate for the Tribunals to give more attention to performance reporting against client service standards in future Annual Reports. This would help the Tribunals to identify areas of client service in need of improvement, as well as to meet accountability obligations to report against their service standards.

41. The Tribunals' new charter covered the key requirements of service charters. However, one service commitment in the new charter which the Tribunals could more effectively implement was the publication of time standards for Tribunal case finalisations in a format which would be easier for clients to access and read. This should be addressed as a matter of priority.

42. Application forms were used by the Tribunals to obtain the information from applicants needed to process their review cases. The Tribunals had a structured approach to the most recent redesign of MRT forms. However, the inclusion of explanatory guidance on the forms; the closer linkage of form sections and supporting guidance; and further changes to the structure and the format of the forms, would make it easier for applicants to complete the forms.

43. The Tribunals' Registries in Sydney and Melbourne provided full Tribunal client services to applicants, while AAT Registries in Brisbane, Adelaide and Perth assisted with the receipt of MRT applications and provided administrative support for Tribunal hearings in those cities. Various

services and facilities were provided to clients with particular service needs. In particular, the Tribunals provided interpreter assistance at hearings to applicants who had little or no English language proficiency.

44. Tribunal complaints handling mechanisms provided avenues for applicants to raise their dissatisfaction with services, including the conduct of hearings. The issuance of more comprehensive guidance on complaints handling would make these mechanisms more effective. More systematic feedback to Tribunal Members on the lessons learned from complaints handling would also help them to improve their future service performance.

45. Regular surveys of applicants and their representatives were not undertaken by the Tribunals to assess their satisfaction with services and desire for particular service improvements. Client surveys are recognised as being a very useful means of obtaining feedback on service quality issues.

Tribunals' response to the audit

46. The Tribunals' overall response to the audit is set out below:

The ANAO performance audit into the effectiveness of the Tribunals' management and operations is a comprehensive analysis of the two Tribunals' operations, governance, management and performance monitoring and provides a sound basis for the Tribunals to make improvements in the areas identified and in the planning and coordination of future organisational change.

The focus of the audit was on the Tribunals' operations in the period 2001–02 to 2004–05. This was a period of major business re-structuring during which the two separate Tribunals essentially became administratively amalgamated. This included the co-location of operations, the cross-appointment of Members and staff, and an alignment of staffing structures, procedures and systems. At the same time, the Tribunals continued to conduct a high volume of reviews within an area of Government decision-making that is subject to a high level of judicial and public scrutiny.

The ANAO identified scope for the Tribunals to improve management performance, particularly by strengthening operational planning, in reporting of performance information and by taking opportunities to enhance client services.

The ANAO recommended that the Tribunals:

- enhance planning and performance monitoring capability;
- strengthen their outcomes and outputs framework;

- strengthen external reporting through the Tribunals' Annual Report;
- enhance internal management reporting; and
- enhance the quality of services to applicants and representatives.

At the time of the report's tabling the Tribunals had taken steps to implement all five recommendations.

The report would assist other agencies delivering operational outcomes to strengthen their operational performance planning, reporting and accountability.

47. The ANAO provided the Department of Finance and Administration (Finance) with extracts of the proposed report, for comment. The extracts related to funding agreements which were made between the Tribunals and Finance since 2000. Finance did not provide any comment on the extracts.

Recommendations

Set out below are the ANAO's recommendations aimed at improving the Tribunals' management of their operations. Report paragraph references and the Tribunals' summary responses are also shown.

Recommendation No.1

Para 3.35

The ANAO recommends that, to enhance their planning and performance monitoring capability, the Tribunals:

- develop an annual operational plan which identifies priorities for major business activities and initiatives, and allocates responsibilities and specifies timeframes for their implementation; and
- prepare an annual performance information framework which consolidates details of Tribunal performance information which is required to be collected and reported for accountability purposes.

Tribunals' response: Agreed.

Recommendation No.2

Para 4.21

The ANAO recommends that the Tribunals strengthen their outcomes and outputs frameworks set out in their Portfolio Budget Statements, by:

- articulating the basis on which the Tribunals assess their contribution to the quality and consistency of decision-making concerning migration and temporary entry visas and protection visas and their professional and effective working relationships with stakeholders; and
- specifying appropriate targets or other bases of comparison for quality indicators for measuring the efficiency of Tribunal outputs, in terms of case processing timeliness, complaints and appeals against decisions.

Tribunals' response: Agreed.

**Recommendation
No.3**

Para 5.24

The ANAO recommends that the Tribunals strengthen external reporting through their Annual Reports by:

- addressing the impact of their outputs and their contribution to outcomes; and
- including clear assessments of output performance, reporting performance results against PBS targets; and providing more comprehensive analysis of factors affecting performance.

Tribunals' response: Agreed.

**Recommendation
No.4**

Para 5.36

The ANAO recommends that the Tribunals enhance internal management reporting, by introducing:

- an overarching 'balanced scorecard'-type management report which covers their full range of PBS performance indicators; and
- common formats, across both Tribunals and both Registries, for management reports on particular areas of Tribunal performance.

Tribunals' response: Agreed.

**Recommendation
No.5
Para 6.100**

The ANAO recommends that the Tribunals enhance the quality of services to applicants and their representatives, by:

- committing to regular review of the joint service charter, more widely promoting the charter, and making information about overall time targets for the completion of reviews more accessible to applicants;
- reviewing application forms to improve the quality of guidance to applicants and the user-friendliness of their structure and format;
- issuing more comprehensive guidance on complaints handling and providing Members with more systematic complaints feedback; and
- conducting regular surveys of the satisfaction of applicants and their representatives with Tribunal service performance.

Tribunals' response: Agreed.

Audit Findings and Conclusions

1. Introduction

This Chapter provides an overview of the Migration Review Tribunal (MRT) and the Refugee Review Tribunal (RRT). It also outlines the audit approach.

Functions of the Tribunals

1.1 The Migration Review Tribunal (MRT) and the Refugee Review Tribunal (RRT) are statutory bodies which respectively provide independent merits review of general visa decisions and protection visa decisions of officers of the Department of Immigration and Citizenship (DIAC).²

1.2 The Tribunals were established under the *Migration Act 1958* (the Migration Act). The RRT began operations in 1993 and the MRT in 1999.³

1.3 General visa decisions reviewable by the MRT include:

- decisions to refuse visas to applicants in Australia;
- decisions to refuse visas to applicants overseas, where there is an Australian connection through a nominator, sponsor or close family; and
- decisions to cancel visas within Australia (other than cancellations on character or conduct grounds).

1.4 Protection visa decisions reviewable by the RRT include decisions made in Australia to refuse to grant or to cancel protection (refugee status) visas. Protection visas may be granted to persons who are non-citizens in Australia to whom Australia has protection obligations under the 1951 United Nations Refugees Convention as amended by the 1967 UN Protocol.

1.5 The Migration Act states that, in carrying out their functions, the Tribunals are to pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick.

² DIAC officers make the primary visa decisions, as delegates of the Minister for Immigration and Citizenship.

³ The MRT was preceded by the Immigration Review Tribunal which was established in 1989.

1.6 The Tribunals’ merits review process, their conduct of reviews and their decision-making powers in relation to cases are outlined in Table 1.1.

Table 1.1

Tribunal independent merits review

Merits review process

Merits review involves an administrative reconsideration of the subject matter of a case.

The review applicant is provided with an opportunity to give further information supporting his or her case. The review applicant is also informed of any information which could form the basis for an adverse decision before his or her case is decided.

The Tribunals can conduct further investigations to support their decision-making process. Each case is reconsidered by the Tribunals in light of the relevant facts, law and government policy.

The Tribunals may substitute a fresh decision, being the correct and preferable decision, in place of the primary decision. Merits review does not involve or depend on passing judgment on the reasoning for the primary decision.

Conduct of fair and timely reviews

Statutory Tribunal procedures set out in the Migration Act are designed to ensure that reviews are conducted fairly. These procedures include a right of access to the written material before the Tribunals, and the opportunity to present evidence to, and appear before, the Tribunals.

The Tribunals, in reviewing decisions, are not bound by technicalities, legal forms or rules of evidence, and are to act according to substantial justice and the merits of the case.

Unlike courts, the Tribunals are not adversarial. The Minister is not represented in Tribunal proceedings and DIAC’s role is usually limited to providing documents to the Tribunals.

Statutory Tribunal procedures permit applicants appearing before the Tribunals to have another person present to assist them, but not to represent them at the hearing.

The Tribunals operate within a legislative framework which requires a speedy resolution of applications for review of general visa and protection visa decisions.

The MRT must give priority by law to certain cases, including persons being held in immigration detention and visa cancellation cases. It also has a general time limit of seven working days to make a decision in respect of bridging visa cases of persons in immigration detention.

The RRT is required to make a decision in respect of all RRT reviews within 90 calendar days.

The Migration Act also prescribes periods by which applicants may provide comments or additional information to the Tribunals, and are invited to appear before the Tribunals.

Decision-making powers

The Tribunals may affirm, vary or set aside a decision under review, remit a matter to DIAC for reconsideration, or substitute a new decision.

The Tribunals make their decision within the same legislative and policy framework as the primary decision-maker. They must have regard to government policy and are bound by any directions made by the Minister under the Migration Act.

Source: ANAO analysis of Tribunal Annual Reports and other documentation.

Administrative arrangements

The Principal Member and the Registrar

1.7 The Migration Act provides for two Tribunals - the MRT and the RRT, each having a Principal Member and a Registrar.⁴

1.8 The Principal Member is the executive officer of the Tribunal and is responsible for its overall operation and administration. The Registrar assists the Principal Member in overall management of Tribunal operations and has direct day to day responsibility for the management of operations and staff.

Joint governance

1.9 While the MRT and the RRT exist as separate agencies, they essentially operate together to achieve administrative efficiencies. The Principal Member, the Registrar and the Deputy Registrar occupy equivalent positions in both Tribunals. The Tribunals also have various joint governance arrangements, including a Joint Management Board and a Joint Audit Committee.

1.10 Until recently, the Tribunals were prescribed as separate agencies under the *Financial Management and Accountability Act 1997*. From 1 July 2006, the Tribunals became a single entity for financial management purposes. For other purposes, they remain separate entities under the Migration Act.

Member and staff resources

1.11 The Tribunals have Members (appointed under the Migration Act) and staff (appointed under the Migration Act and employed under the *Public Service Act 1999*). Members are appointed by the Governor-General for fixed terms. Members constitute the MRT or RRT when deciding a particular review.

1.12 At 30 June 2005, the MRT and the RRT respectively had 66 and 74 Members (including part-time Members). Some 44 of those Members were appointed to both Tribunals (referred to as cross-appointments). All of the 96 Members of the Tribunals were cross-appointed at 1 July 2006.

1.13 The Tribunals employed a total of 289 Australian Public Service (APS) staff at 30 June 2005. By 30 June 2006, there were 264 APS staff employed at the Tribunals.

⁴ The Migration Act also provides for a position of Deputy Principal Member of the RRT, and for each Tribunal to have such Deputy Registrars and staff as are required.

Location of Registries

1.14 Registries of the Tribunals are located in Sydney and Melbourne. The Principal Registry is in Sydney. Applications for MRT reviews may also be lodged at Registries of the Administrative Appeals Tribunal (AAT) located in Brisbane, Adelaide and Perth. Part-time Tribunal Members are based at these Registries, under a service delivery agreement with the AAT.

Cost of operations

1.15 The Tribunals have ongoing funding arrangements with the Department of Finance and Administration, for appropriations which provide the bulk of the Tribunals' revenues. Their annual funding is based on the number of cases finalised and a formula assessment of fixed and variable costs.

1.16 MRT and RRT outputs cost \$20.6 million and \$22.6 million respectively in 2004–05.

Operating context

1.17 In recent years, the Tribunals have experienced considerable change in their operations and operating environment. Major changes have included the introduction of shared facilities and services; a decrease in case lodgements; and the specification of a 90 day time period for finalisation of RRT reviews. The Tribunals' commitment to meet Government expectations regarding the conduct of their operations is now also set out in a formal Statement of Intent.

Shared facilities and services

1.18 In 2001, the Government determined that the MRT and the RRT should identify and implement measures to achieve administrative efficiencies. Since then, the Tribunals have been implementing measures to achieve efficiencies in their operations, through common infrastructure, service arrangements, and cross-appointment of Members and staff. For example:

- the Tribunals co-located their Registries in Sydney and Melbourne, and have used AAT facilities in Brisbane, Adelaide and Perth;
- the Tribunal Registry in Canberra was closed in June 2004, as part of these efficiency measures;
- the Tribunals have common corporate, research and library services;
- 40 per cent of Members were cross-appointed to both Tribunals, and all staff were appointed to both Tribunals, by June 2005; and

- the Tribunals implemented a single set of terms and conditions for Members, which had been issued by the Minister, as well as introducing a single certified agreement which covered all staff.

Tribunal case lodgements

1.19 The Tribunals have a diverse and large potential review workload. This reflects the wide range of visas reviewable by the two Tribunals, and the high volume of primary visa-related DIAC/DIMA decisions made in any given year.

1.20 The MRT reviews DIAC decisions relating to bridging visas; visitor visas; student visas; business visas; skilled visas; partner visas; and family visas. Annually, DIAC processes around three million visitor visa applications and 100 000 applications for partner and family visas.

1.21 The RRT reviews DIAC decisions to refuse to grant, or to cancel, protection visas within Australia. Each year, DIAC handles about 2000–3000 initial protection visa applications.

1.22 The Tribunals experienced a 23 per cent decrease in the total number of applications for review of DIMA decisions (hereinafter referred to as Tribunal case lodgements) in the five year period from 2000–01 to 2004–05.

1.23 However, as shown in the data table in Figure 1.1, case lodgements of each Tribunal fluctuated considerably from year to year during this period. This volatility was attributable to various short-term factors, including changes in primary visa lodgements with DIMA; DIMA primary visa grant rates; as well as rates of Tribunal decisions remitted by the courts for reconsideration.

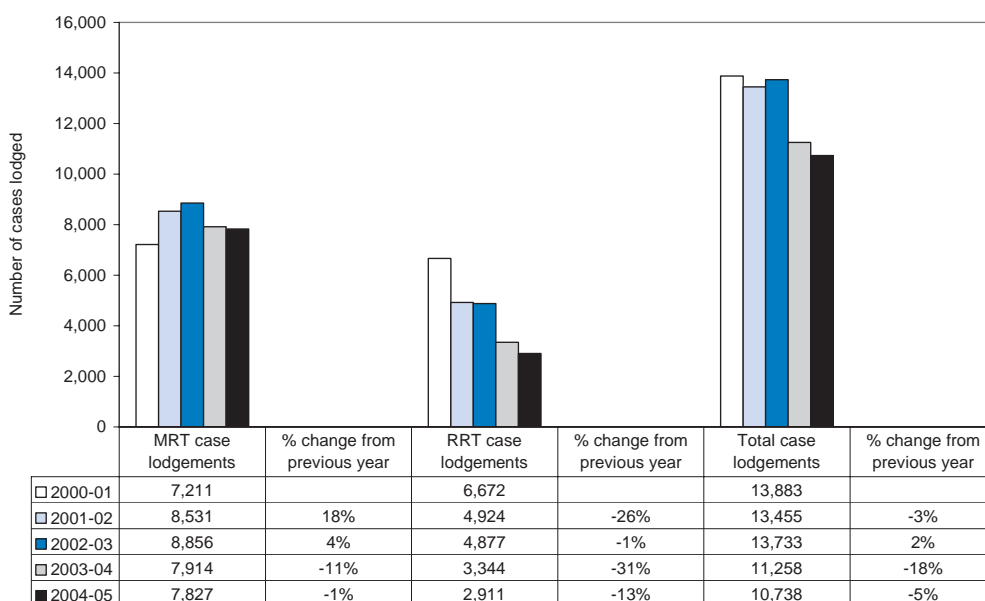
1.24 MRT case lodgements increased between 1999–00 and 2002–03, but then declined, mainly due to changes to certain visa criteria and a reduction in the number of persons in immigration detention.

1.25 Case lodgements with the RRT decreased by 56 per cent since 2000–01. This trend reflected changes in primary lodgements with DIMA and DIMA primary grant rates for protection visas (affected by circumstances overseas, DIMA processing priorities and Australia's border control policies).

1.26 The Tribunals responded in 2004–05 to the declining RRT workload, by redeploying some RRT Members to MRT casework during that year.

Figure 1.1

Tribunal case lodgements, 2000–01 to 2004–05



Source: ANAO analysis of Tribunal performance information.

Finalisation of RRT reviews within 90 days

1.27 In June 2005, the Government announced that the Migration Act would be amended to provide for processing time limits of 90 days for both DIMA primary protection visa decisions and RRT reviews. The amending legislation specifying these time limits received assent in December 2005.

1.28 During the first half of 2005–06, the RRT developed and implemented a range of measures aimed at finalising reviews within the 90 day time limit, including reassignment of Member resources from the MRT to RRT casework.

Statements of Expectations and Intent for the Tribunals

1.29 An important, recent development in relation to the corporate governance of the Tribunals was the issue of a Statement of Expectations by the then Minister for Immigration and Multicultural Affairs to the Tribunals in March 2006. This Statement was prepared as part of the implementation of Government’s response to the Report on the Review of Corporate Governance of Statutory Authorities and Office Holders (the Uhrig Report).

1.30 The Statement of Expectations by the Minister sets out the Government's expectations on how the Tribunals will conduct their operations. The Principal Member responded in April 2006 with a Statement of Intent, which sets out the Tribunals' commitments in relation to their operations and identifies the key performance indicators for the Tribunals.⁵

Audit approach

Audit objective and scope

1.31 The objective of the audit was to assess the effectiveness of the Tribunals' management of their operations. To this end, the audit examined whether the MRT and the RRT:

- have achieved intended operational efficiencies from the introduction of common facilities, services and resourcing;
- have established appropriate arrangements for governance, business planning and guidance of Members and staff, and for performance monitoring and reporting of Tribunal operations;
- finalise cases within Tribunal time and productivity standards; and
- provide applicants with services in accordance with service standards.

1.32 The criteria for the audit were derived from recognised good practice and benchmarks in previous ANAO audits, relevant to Tribunal operations.

1.33 The audit covered Tribunal operations for review of visa decisions. The correctness of individual decisions was not assessed as part of the audit.

1.34 The main audit focus was on developments in the Tribunals' management performance during the four year period from 2001–02 to 2004–05.

⁵ The Statement of Expectations by the Minister and the Statement of Intent by the Principal Member are reproduced in the Migration Review Tribunal and Refugee Review Tribunal Annual Report 2005–06, Appendix 3. They are also accessible at websites of the MRT and the RRT.

The key performance indicators for the Tribunals included the correctness and quality of Tribunal decisions, having regard to the level and outcome of appeals against Tribunal decisions; the extent to which the Tribunals meet productivity expectations and time standards for the completion of reviews, and the number and nature of complaints received in relation to Tribunal operations.

Audit methodology

1.35 The audit methodology included:

- review of the legislation, policies and procedures of the Tribunals;
- examination of records relating to Tribunal operations;
- analysis of performance information of the Tribunals; and
- interviews with Members and staff, and with selected stakeholders.

1.36 Audit fieldwork was carried out at the Sydney and Melbourne Registries of the Tribunals.

1.37 The audit was conducted in accordance with ANAO auditing standards, at a cost to the ANAO of \$585 000.

Previous performance audit coverage and other reviews

1.38 The Tribunals have not previously been the subject of an ANAO performance audit.

1.39 In 2005, the Senate Legal and Constitutional References Committee undertook an inquiry into the administration and operation of the *Migration Act 1958*. The inquiry included an examination of Tribunal operations.

Report structure

1.40 This report comprises six chapters:

Chapter 1: Introduction;

Chapter 2: Operational Alignment of the Tribunals;

Chapter 3: Governance, Risk Assessment, Planning, Resourcing and Guidance;

Chapter 4: Performance Indicators;

Chapter 5: Reporting on Performance; and

Chapter 6: Client Services to Applicants.

2. Operational Alignment of the Tribunals

This Chapter examines initiatives of the Tribunals to improve their organisation structure and governance arrangements, and achieve operational efficiencies through shared facilities, common services and the cross-appointment of Members and staff. Tribunal actions to adjust staff resourcing to changing caseload are also examined.

Tribunal structure

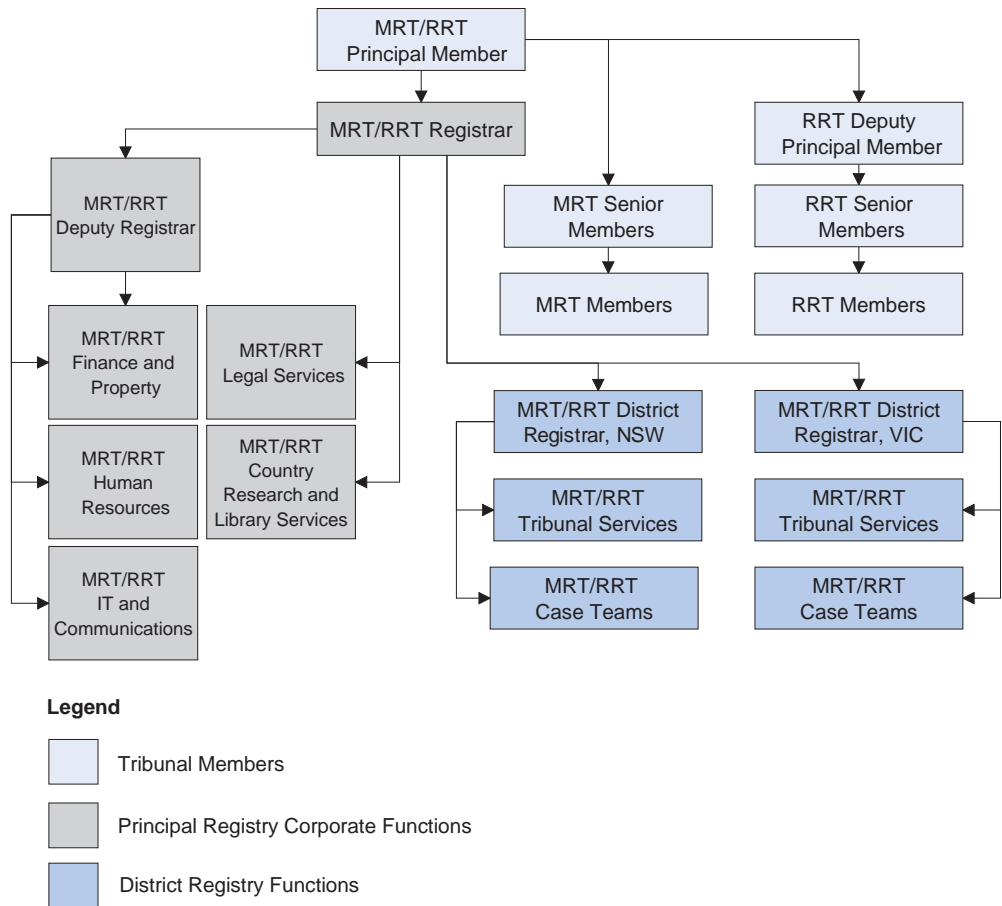
2.1 Figure 2.1 shows the organisation structure of the Tribunals, at June 2005. This structure comprised:

- The dual **Principal Member** - the Chief Executive Officer, responsible for the overall operation and administration of the Tribunals.
- The dual **Registrar** - the general manager and chief finance officer, assisted by the dual **Deputy Registrar**.
- The **Deputy Principal Member of the RRT**, assisting the Principal Member in relation to the management of the RRT's membership and management and planning in relation to the RRT's caseload.
- **Senior Members of the MRT or the RRT**, providing leadership and guidance to full-time and part-time Tribunal Members.
- **MRT and/or RRT Members**, constituting the MRT or the RRT for the purpose of conducting the review of a particular visa decision.
- **Directors and Managers of functional areas** in the Principal Registry in Sydney, responsible for corporate management and support and research services, and reporting to the Registrar or his Deputy.
- **District Registrars (NSW and Victoria)**, managing the Tribunals' two Registries (organised into **Case Teams** and **Tribunal Services**) and reporting to the Registrar.

2.2 These organisation arrangements, which have aligned the operations of the two Tribunals, were progressively introduced in the course of a series of Tribunal initiatives during the four year period from 2001–02 to 2004–05.

Figure 2.1

Organisation structure of the Tribunals, June 2005



Note: As a result of changes since June 2005, all Members, including Senior Members, are now appointed to both Tribunals. The position of the RRT Deputy Principal is currently vacant; Senior Members acted in this position between April and September 2006.

Source: ANAO analysis of Tribunal documentation.

2.3 The initiatives were taken after the Government had put forward a Bill in 2000 for the amalgamation of existing Commonwealth merits review Tribunals (including the MRT and the RRT) into a new Administrative Review Tribunal. This Bill did not secure the approval of the Senate. The MRT and the RRT were subsequently requested by the Government and the Minister for Immigration and Multicultural Affairs in 2001 and 2002 to work closely together with a view to achieving administrative efficiencies.

2.4 The ANAO assessed the Tribunals' effectiveness in pursuing efficiency initiatives, particularly whether the Tribunals:

- identified proposals to secure efficiencies, as requested by the Government and the Minister for Immigration and Multicultural Affairs;
- took effective action to plan, manage and implement the proposals;
- estimated potential benefits and costs, and associated efficiencies and cost savings from the proposals; and
- monitored, assessed and reported the progress and achievements of the initiatives, for internal and external accountability purposes.

2.5 The ANAO also reviewed trends in Tribunal resourcing statistics and expenses, for evidence of the impact of these initiatives on Tribunal operations.

Tribunal proposals for achieving efficiencies

Proposal identification and communication to relevant parties

2.6 The ANAO found that the Tribunals progressively identified and developed a series of proposals for achieving efficiencies, in line with the request of the Government and the Minister. The main proposals included:

- the dual appointment of the Principal Member, Senior Members and the Tribunal Registrar and Deputy Registrar to both Tribunals; and the establishment of new joint governance arrangements for the Tribunals;
- the co-location of Principal Registry functions in Sydney and the closure of the Canberra District Registry;
- the co-location and integration of Tribunal District Registries in Sydney and in Melbourne;
- the creation of integrated corporate management services and executive support, policy, legal, country research and library services;

- the development of a joint certified agreement for Tribunal staff and a single set of employment terms and conditions for Tribunal Members, and the cross-appointment of Tribunal Members and staff; and
- the design and introduction to service of a joint Case Management System for Tribunal operations.

2.7 The dual appointment of the Principal Member and the Registrar to both Tribunals in 2001 and 2002 provided the initial structural basis for efficiency initiatives to align the operations of the Tribunals. Four of the major areas for efficiency improvement outlined above were identified by the Tribunals in the second half of 2002.⁶ Further opportunities to make efficiency improvements continued to be identified and pursued in the following years.⁷

2.8 The Tribunals were effective in communicating information about these initiatives to relevant parties with an interest in these developments. Proposals were advised to the Minister in correspondence on efficiency initiatives and in general quarterly reports on Tribunal operations. They were also communicated to Tribunal Members and staff through special e-mails from Tribunal management, periodic management update bulletins, information sessions on individual proposals, and the Tribunals' formal staff consultative forums. In addition, proposals were outlined in Tribunal Annual Reports.

Planning and management of proposals

2.9 The ANAO found that the Tribunals effectively planned and managed the implementation of the identified proposals for achieving efficiencies.

2.10 The Tribunals set clear target dates for major proposed changes. For example, they aimed to make changes to the four major areas for efficiency improvement identified in 2002 over the following two years. This timeframe appropriately scheduled the co-location of MRT and RRT Registries around the time of expiry of their leases in Melbourne in 2003, and in Sydney in 2004–05.

2.11 Tribunal management approved proposed major changes at key stages of their development. For the major initiatives, the Tribunals established and used various 'one off' management arrangements, such as a steering

⁶ These were the co-location of Principal Registry functions in Sydney and closure of the Canberra District Registry; the integration of Tribunal research and legal services; the negotiation of a joint certified agreement for MRT and RRT staff, and the co-location of Tribunal Registries in Melbourne and Sydney.

⁷ The main initiatives identified by the Tribunals since the first half of 2002 included the appointment and flexible deployment of cross-appointed Tribunal Members; the integration of common services of MRT and RRT Registries; and the development of a joint case management system.

committee and working groups to develop the proposals; and project control groups to coordinate and manage the implementation of approved changes.

2.12 Consultants were engaged to advise on specialist property aspects of the co-location of Tribunal Registries in Melbourne and in Sydney. Tribunal Members and staff were also extensively consulted during the development and execution of the major initiatives, such as the Registry co-locations.

2.13 These features of the Tribunals' planning and management of the implementation of initiatives were reflected in arrangements made for the co-location of the Sydney MRT and RRT Registries in 2004–05 (see Table 2.1).

Table 2.1

Case study: Tribunals' co-location in Sydney, 2004–05

Prior to their co-location in 2005, the NSW MRT Registry and the NSW RRT Registry were accommodated in premises on five floors across three buildings in the Sydney Central Business District. Their office leases were due to expire in March and April 2004, and in July 2005.

The Tribunals commenced planning for possible re-location or co-location in 2003, well ahead of lease expiry. They secured short-term lease extensions at two of the buildings to better align their lease end dates, and identified and considered various options to remain in current buildings or to move to alternative buildings, including possible co-location with the AAT.

The Tribunals accepted a leasing proposal (heads of agreement) for four floors in a single building in July 2004. Having selected the premises, the Tribunals negotiated the lease arrangements and then proceeded with the design and fit-out of their new offices.

During the project, the Tribunals engaged a number of specialist consultants for property advice, legal services, security advising, project supervision, fit-out design and fit-out contracting. They also established an in-house project control group to manage the project, and a committee to consult with Tribunal management, Members and staff regarding accommodation specifications.

Members and staff were kept informed of the progress of the accommodation proposal through a number of information sessions, organised site visits and an Intranet bulletin board. Stakeholders were also advised of the proposed change of address of the Tribunals.

The co-located Tribunals commenced operations at their new offices on 1 May 2005.

Source: ANAO analysis of Tribunal documentation.

Estimation of benefits, costs and efficiencies from proposals

2.14 The objectives of proposed efficiency improvements and their expected benefits and costs were usually identified in Tribunal project documentation. For major initiatives, the Tribunals also usually attempted to quantify potential efficiencies or cost savings. Examples are outlined in Table 2.2.

2.15 As part of the negotiation of funding arrangements between the Tribunals and the Department of Finance and Administration in 2004, anticipated savings from Tribunal efficiency improvements were identified and reflected in agreed reductions to the funding of RRT operations for 2005–06 and 2006–07 (see Table 3.7 for details). The Tribunals advised that those reductions were carried through to appropriations in those years.

Table 2.2

Key objectives, expected benefits and costs, and potential efficiencies of three major Tribunal initiatives

Co-location of the MRT and the RRT in Melbourne, 2003	
Key objective	To secure a new long-term lease for Tribunal office accommodation and ancillary uses, including hearing rooms, at a single location in the Melbourne Central Business District.
Main expected benefits	Consolidation of the operations of the MRT and the RRT and achievement of benefits from a common reception area and shared interview and hearing rooms. Occupancy of premises of the required level of amenity for the least cost, relative to alternative premises.
Expected costs	Proposed lease for nine years and eleven months, commencing on 1 September 2003. Floor space of up to 3300 square metres (sm) on two floors and part of another floor. \$0.7 million base annual rent plus \$0.2 million estimated outgoings (\$290 per sm). Fit-out cost of \$1.2 million (for 2700 square metres) (\$435 per sm). Rent reviews fixed at 4 per cent per annum.
Potential efficiencies/ cost savings	Lower rent and estimated outgoings than alternative office accommodation. Net rent free period of 5 months from the lessor. ANAO comment: The Melbourne co-location was carried out within a relatively short time frame after a further lease of existing premises could not be secured. Property search was undertaken and cost comparisons were obtained for suitable office accommodation using the services of specialist property consultants.

Integration of the MRT and the RRT in Sydney, 2005	
Key objective	To secure a new long-term lease for Tribunal office accommodation and ancillary uses, including hearing rooms, at a single location in the Sydney Central Business District.
Main expected benefits	Significant reduction in the Tribunals' ongoing property operating expenses. Increase in the operational efficiency of the Tribunals.
Expected costs	Proposed lease for ten years, commencing on 1 April 2005, with one 5 year option. Floor space of 4346.2 square metres (sm) on four whole building levels. \$1.6 million base annual rent plus \$0.4 million estimated outgoings (\$472 per sm). Fit-out cost of \$4.4 million (\$1000 per sm). Rent reviews fixed at 3.75 per cent per annum.
Potential efficiencies/ cost savings	Reduction of spatial requirements-16 per cent less space than existing premises. Reduction of gross rentals per square metre-7 per cent lower than existing premises. Expected fit-out costs to be funded from lease incentives from the lessor (\$5.3 million), with any residual funds to be used for a net rent free period. ANAO comment: Services of specialist property consultants were used to undertake property search and cost comparisons, and to provide advice on suitable premises and lease terms and conditions. The potential cost savings associated with the Sydney co-location were partly attributable to property market conditions favourable to lessees.

Combination of the MRT and the RRT Registries in Sydney, 2005	
Key objective	To combine the staffing structures and work processes for Registry operations in Sydney upon co-location in May 2005.
Main expected benefits	Integration of MRT and RRT client services, shared across several service teams. Combination of MRT and RRT casework across case teams.
Expected costs	Staffing resources totalling effective full-time equivalent (FTE) of 101.7 staff. Annual salary cost of \$4.7 million.
Potential efficiencies/ cost savings	Reduction of staffing resources-4 per cent lower than previous separate structures. Reduction of salary costs-4 per cent lower than previous salary costs (\$183 000). Proposed review of staffing resource requirements after three months.

Source: ANAO analysis of Tribunal documentation.

Extent of implementation of proposals

2.16 The ANAO found that the Tribunals had successfully implemented proposals to align MRT and RRT operations. Table 2.3 summarises the main actions taken during the period from 2001–02 to 2004–05.

Table 2.3

Tribunal actions to improve governance and achieve efficiencies

Focus area	Initiatives	Implemented
Joint executive structure	Dual appointment of Principal Member to the MRT and the RRT	Jul 2001
	Dual appointment of Registrar to the MRT and the RRT	Sep 2002
	Dual appointment of Deputy Registrar to the MRT and the RRT	Nov 2002
	Appointment of a single District Registrar for the Melbourne Registry	Aug 2004
	Appointment of a single District Registrar for the Sydney Registry	May 2005
Joint governance arrangements	Establishment of a Joint Management Board to manage the Tribunals	Dec 2002
	Establishment of a Joint Audit Committee	Feb 2003
	Establishment of a combined Tribunal Senior Management Group	Mar 2005
	Tribunals operating as one entity for financial management purposes	Jul 2006
Closure of the Canberra Registry and co-location of ongoing Registries	Transfer of MRT Principal Registry functions from Canberra to Sydney	Jun 2002
	Co-location of the MRT and the RRT in Melbourne	Sep 2003
	Closure of the MRT District Registry in Canberra	Jun 2004
	Combination of MRT and RRT Registries in Melbourne	Sep 2004
	Co-location and combination of MRT and RRT Registries in Sydney	May 2005
Creation of common services	RRT provision of corporate management services for the MRT	Jul 2002
	Integration of legal and country research and library services	Sep 2003
Common resourcing arrangements	Signing of a joint certified agreement for MRT and RRT staff	Sep 2003
	Cross-appointment of a substantial number of Tribunal Members	Jul 2004
	Determination of common terms and conditions of Tribunal Members	Apr 2005
	Cross-appointment of Senior Members to the MRT and the RRT	Jan 2006
Joint case management system and other IT	Introduction of a shared Intranet for the Tribunals	Jun 2003
	Introduction of a new shared Intranet for the Tribunals	Nov 2004
	Staged implementation of a Joint Case Management System	Apr 2006

Source: ANAO analysis of Tribunal documentation.

Reporting of progress and achievements

2.17 The Tribunals reported the progress of initiatives to the Minister in their quarterly reports, to Members and staff in periodic management update bulletins, and externally through their Annual Reports. However, the ANAO found that, after implementation of major initiatives, the Tribunals did not clearly assess and report, internally or externally, whether the objectives of initiatives had been fully realised, within cost and on time.

2.18 In order to enhance accountability of the Tribunals for the management of future major initiatives, there would be benefit in the Tribunals incorporating post-implementation reviews into the design of future major initiatives and carrying out such reviews within an appropriate timeframe of completion of the projects. This would clarify, and provide the basis for enhanced reporting on, the extent to which planned objectives of major initiatives are achieved and expected efficiencies and cost savings are realised.

Ongoing Tribunal actions to align staffing resources to caseload

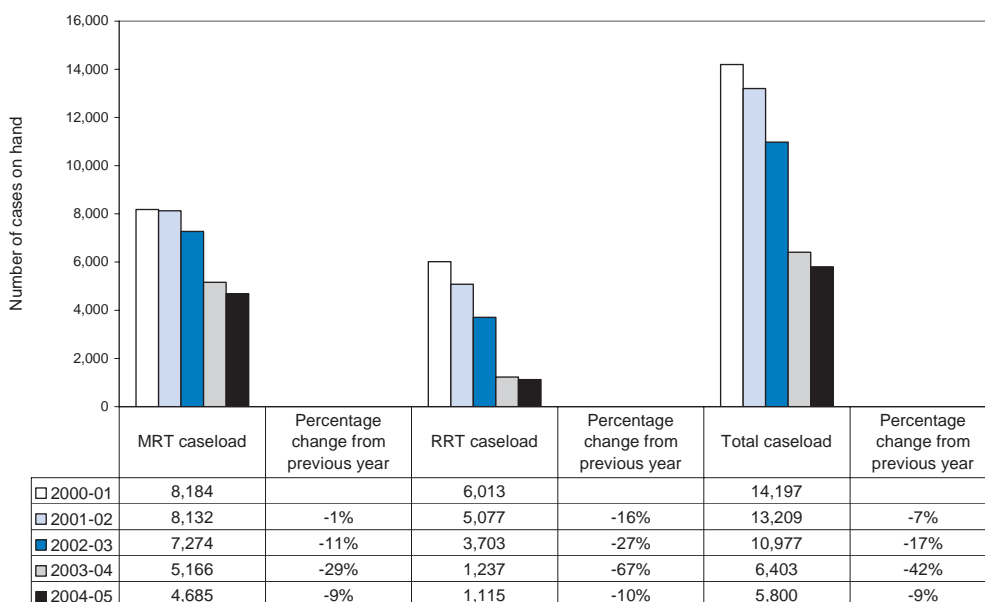
2.19 In addition to the management and implementation of the efficiencies initiatives outlined above, the Tribunals have had ongoing responsibility for the effective management and efficient use of their staff resources, particularly the adjustment of staff resources to accord with changes in Tribunal caseload.⁸

2.20 As outlined in Chapter 1 (see Figure 1.1), the Tribunals experienced a decrease in case lodgements from 2000–01 to 2004–05. As case finalisations exceeded case lodgements in each of these years, fewer cases remained on hand with the Tribunals at each year-end. Figure 2.2 shows these trends.

⁸ 'Caseload' refers here to the number of cases which the Tribunals have on hand at any given time. It is equal to the number of cases on hand at the end of the previous reporting period, plus case lodgements during the current reporting period, minus case finalisations during the current reporting period.

Figure 2.2

Tribunal caseload, end June 2000–01 to 2004–05



Source: ANAO analysis of Tribunal performance information.

2.21 At 30 June 2004, the number of cases on hand at the RRT and the MRT was 67 per cent and 29 per cent lower than recorded a year earlier. This reduction in case backlogs was a welcome development in terms of improved client service. However, it meant that it was likely that the RRT in particular would have a staff resource capacity exceeding its caseload in 2004–05.

2.22 The ANAO found that the Tribunals assessed the staff resourcing implications of their decreased caseload early in 2004–05 and identified options for potential RRT and other staff savings. In particular, the NSW RRT Registry undertook to reduce staff numbers by 34 per cent, through staff transfer to the MRT Registry and other agencies, and non-renewal of non-ongoing staff. This was achieved during 2004–05. In this case, the staffing efficiencies achieved by the Tribunals resulted from the responsiveness of Tribunal management to changing caseload, independent of the main series of efficiency initiatives.

Impact of changes on Tribunal resources and expenses

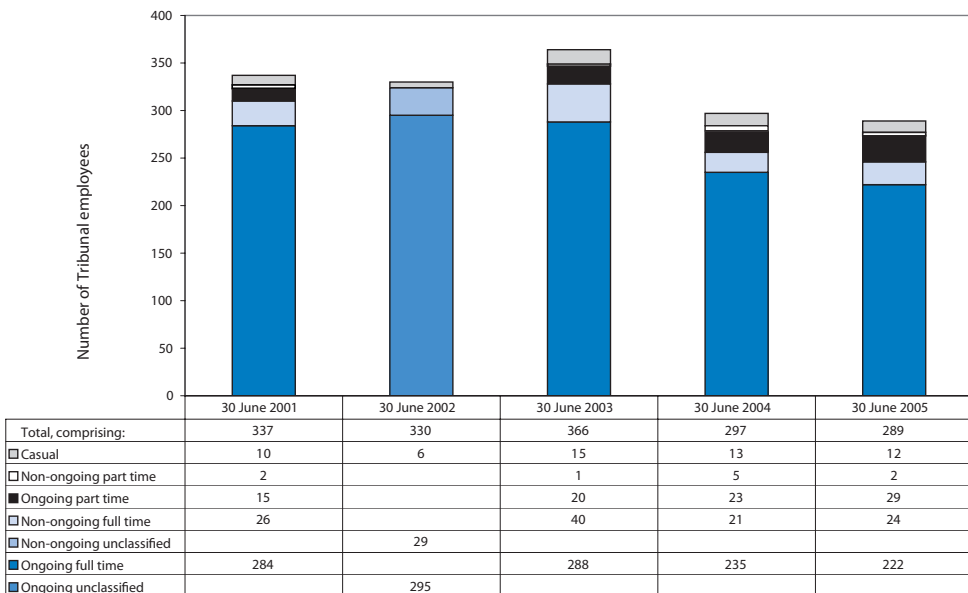
2.23 The ANAO analysed Tribunal statistics and financial results from 2000–01 to 2004–05, for evidence of the overall impact of efficiency initiatives and resource management actions on Tribunal resources and expenses.

Changes in Tribunal staffing resources

2.24 In June 2005, the Tribunals employed 289 Australian Public Service employees (see Figure 2.3). The Tribunals' staffing resources were effectively combined in May 2005, with the integration of separate MRT and RRT Registries in Sydney and the cross-appointment of Tribunal staff. This provided the basis for more flexible future staff deployment on MRT or RRT cases, to meet changing caseload and to enable efficiencies in staff utilisation.

Figure 2.3

Tribunal staffing, 2001–2005



Note: Total non-ongoing and ongoing Tribunal staffing data shown for 2002 are not classified into part-time and full-time positions because figures for the MRT for that year were not readily available. The RRT had no non-ongoing part-time staff and 15 ongoing part-time staff at 30 June 2002.

Source: ANAO analysis of Tribunal performance information.

2.25 Tribunal staffing in June 2005 was at a lower level than at its peak of 366 employees in June 2003. At that time, some 189 of those employees were with the RRT, while 177 employees were with the MRT. The Tribunals' major efficiency initiatives and resourcing adjustments were made after this peak.

2.26 Over the four year period from June 2001 to June 2005, there was a 14 per cent decrease in the number of Tribunal employees. This rate of decrease was similar to the rate of decrease in case lodgements during the same period. The staffing level in June 2005 was sufficient for the Tribunals to reduce case backlogs and achieve their lowest year-end caseloads for the four year period.

2.27 Between June 2001 and June 2005, full-time employment with the Tribunals decreased by 21 per cent, while part-time and casual employment increased by 60 per cent. This indicates that the Tribunals were making greater use of flexible employment practices to carry out their functions.

Changes in Tribunal Member resources

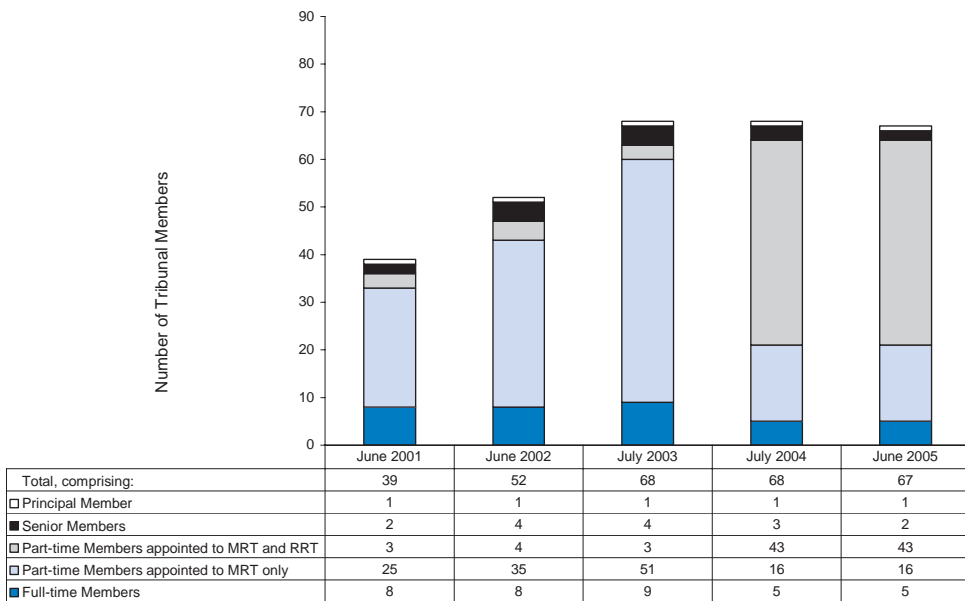
2.28 Members of the MRT and the RRT are appointed by the Governor-General for fixed terms on a full-time or part-time basis. DIAC has administrative carriage of Tribunal Member appointment processes.⁹

2.29 In June 2005, the Tribunals had 67 MRT Members and 74 RRT Members, comprising the Principal Member, the Deputy Principal Member of the RRT, Senior Members, and Members (see Figure 2.4 and Figure 2.5).

2.30 Tribunal membership rose substantially between June 2001 and 2003. The appointment of more part-time Members accounted for most of this increase. Subsequently, the number of MRT Members remained at close to its peak, while there was a decrease in the number of RRT Members in 2004.

2.31 Major changes were made to the composition of both Tribunals in July 2004, with the appointment of 43 Members cross-appointed to the MRT and the RRT. At the same time, there was a reduction in the number of full-time RRT Members, and in the number of Members appointed to one Tribunal only.

⁹ These Tribunal Member appointment processes were outside of the scope of this audit.

Figure 2.4**MRT Member resources, 2001–2005**

Note: At July 2006, the combined Member resources of the MRT and the RRT totalled 96 Members. These comprised the Principal Member, six Senior Members, 73 part-time Members and 16 full-time Members who were appointed to the MRT and RRT.

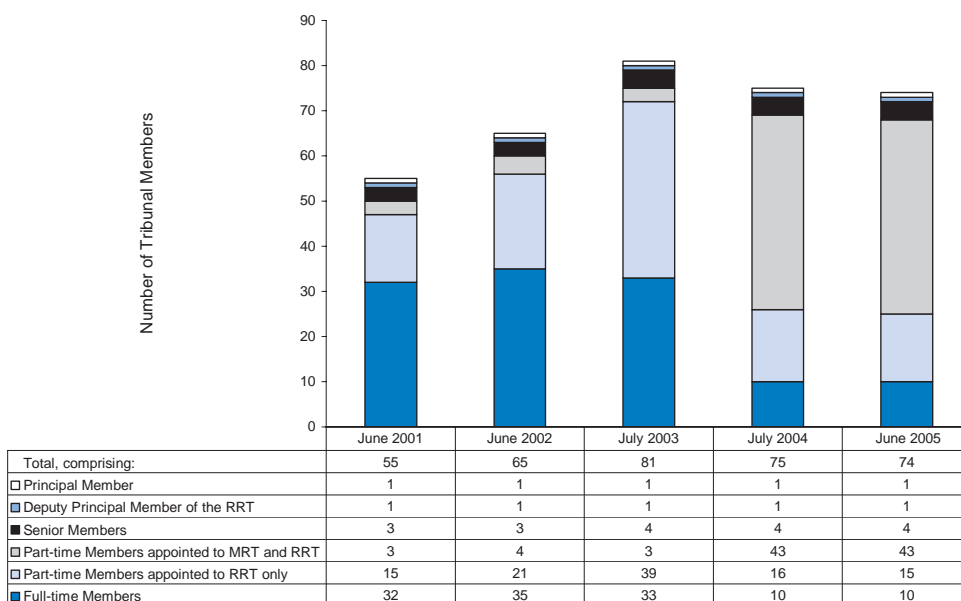
Source: ANAO analysis of Tribunal Annual Reports.

2.32 The Government made these changes in response to decreases in the caseloads of both Tribunals, particularly the RRT, and to provide the Tribunals with greater flexibility to manage caseload fluctuations.

2.33 In 2004–05, the Tribunals used the greatly expanded cross-appointment arrangements to assign some Members to MRT cases, as RRT caseload decreased. In 2005–06, these Members were assigned back to RRT cases, to assist in the finalisation of RRT reviews within a new 90 day time limit.

Figure 2.5

RRT Member resources, 2001–2005



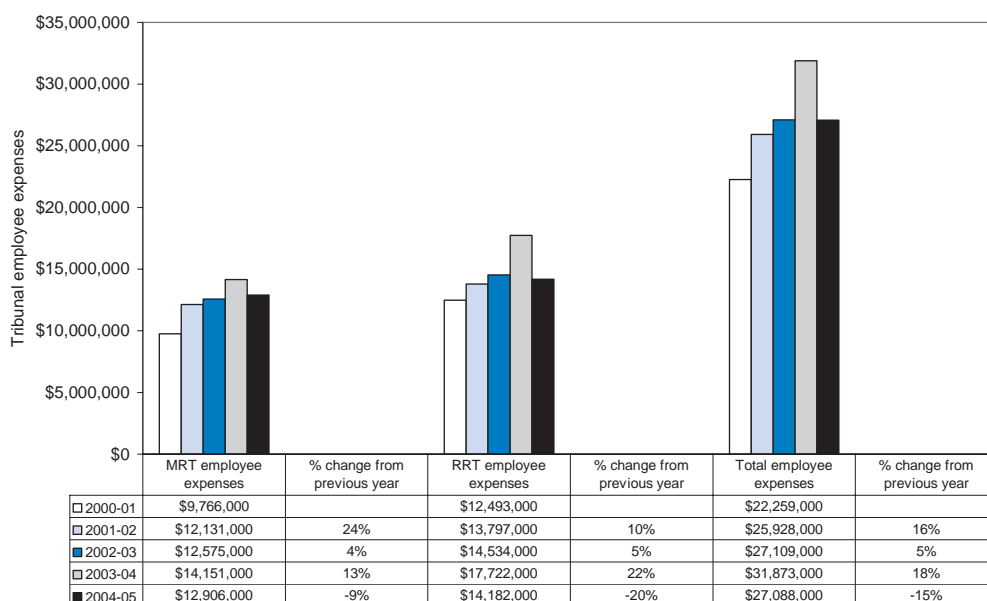
Note: At July 2006, the combined Member resources of the MRT and the RRT totalled 96 Members. These comprised the Principal Member, six Senior Members, 73 part-time Members and 16 full-time Members who were appointed to the MRT and RRT.

Source: ANAO analysis of Tribunal Annual Reports.

Tribunal employee expenses

2.34 Employee expenses of the Tribunals amounted to \$27.1 million in 2004–05. These expenses mainly comprised the salaries of Members and staff, superannuation, leave and other entitlements, and workers compensation premiums. Employee expenses were the largest component (67 per cent) of the Tribunals' total operating expenses in that year.

2.35 Employee expenses increased every year from 2001–02 to 2003–04, when they peaked at \$31.9 million. However, their annual rate of increase varied considerably. Following this period of rising employee expenses, Tribunal employee expenses decreased by 15 per cent in 2004–05 (see Figure 2.6).

Figure 2.6**Tribunal employee expenses, 2000–01 to 2004–05**

Source: ANAO analysis of Tribunal financial information.

Tribunal operating lease rentals

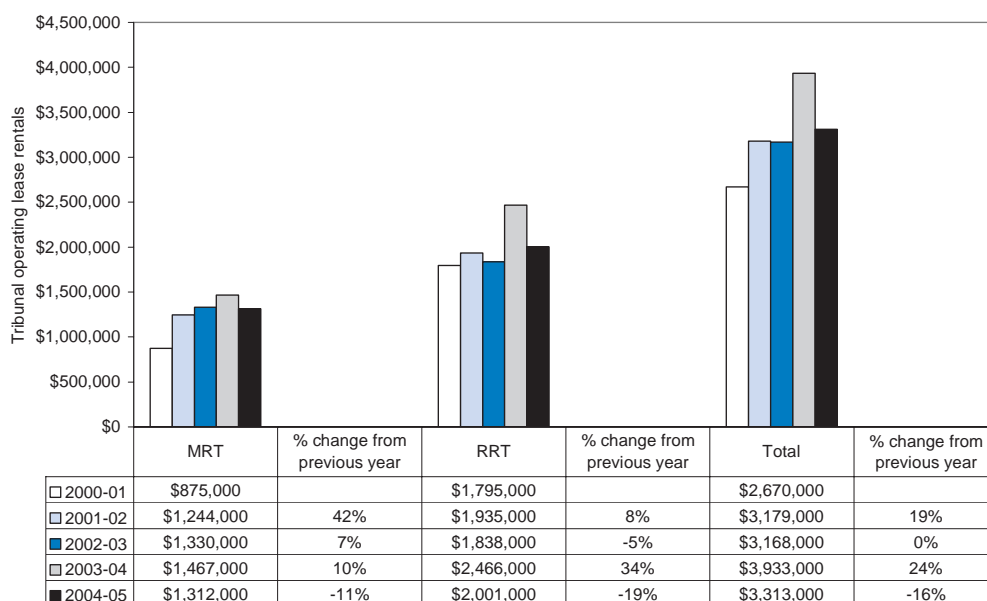
2.36 Total operating lease rentals of the Tribunals were \$3.3 million in 2004–05. A major component of these lease rentals was office rental expenses.

2.37 Tribunal operating lease rentals increased from 2001–02 until their peak at \$3.9 million in 2003–04. In the following year, operating lease rentals decreased by 16 per cent. The Tribunals advised that the main factors which contributed to the peak and the subsequent decrease in operating lease rentals were changes in vehicle lease and video conferencing line lease expenses.

2.38 Over this period, there were also changes in the Tribunals' property operating expenses associated with their occupancy of new leased office accommodation. The Tribunals had additional expenses for office accommodation in Melbourne in 2003–04. This was due to the overlap of lease rentals during their re-location to new premises, as well as costs to make good the previous premises upon expiry of their lease. However, the Tribunals had reduced expenses for office accommodation in Sydney in 2004–05, because of a rent free period at the new premises, secured as part of lease incentives.

Figure 2.7

Tribunal operating lease rental expenses, 2000–01 to 2004–05



Source: ANAO analysis of Tribunal financial information.

Conclusion

2.39 Since 2001, the Tribunals have progressively aligned their operations. They now operate administratively as a single organisation, through joint governance arrangements; integrated corporate management and research functions which service both Tribunals; co-located Registries in Sydney and Melbourne, and cross-appointed Members and staff.

2.40 The Tribunals effectively planned and managed the implementation of efficiency initiatives, in accordance with Government intentions for closer cooperation between the Tribunals to achieve administrative efficiencies. Proposals identified by the Tribunals to align their operations were successfully implemented during the period from 2001–02 to 2004–05. However, efficiency gains achieved from these initiatives were not clearly assessed. The Tribunals could enhance their accountability for the management of future major initiatives, through improved reporting on the achievement of planned objectives and the extent of realisation of efficiencies from such initiatives.

3. Governance, Risk Assessment, Planning, Resourcing and Guidance

This Chapter examines the management structures of the Tribunals and the Tribunals' approaches to risk assessment, planning and resourcing of their operations. Operational policies and procedural guidance of the Tribunals are also examined.

Governance

3.1 Governance refers to the set of responsibilities and practices exercised by agencies to provide strategic direction and to ensure that their objectives are achieved, risks are managed effectively and resources are used responsibly.

3.2 Five aspects of Tribunal governance are examined in this Chapter:

- Management structures and consultative arrangements.
- Risk management and fraud control plans.
- Corporate, operational and functional plans.
- Resourcing, particularly funding arrangements and resource and case finalisation estimation.
- Guidance, particularly operational policies and procedural guidance.

3.3 Two other aspects of Tribunal governance—performance indicators and performance reporting—are addressed in Chapters 4 and 5.

3.4 Progress towards the Tribunals' vision of achieving excellence in merits review is contingent upon meeting case finalisation and unit cost targets for case processing and decision-making, while maintaining the quality of decisions and providing procedural fairness and client service to applicants.

3.5 Sound governance is likely to contribute to improved performance in these areas. It also is likely to strengthen organisational capacity to anticipate and respond to risks and challenges affecting the operations of the Tribunals. These factors include:

- changes in the volume of new cases lodged, and the complexity of their claims and case information;
- the number of Tribunal Members appointed by the Government, and the length and breadth of their experience with the Tribunals;

- the range of categories and classes of visa decisions which are the subject of applications for review; and the diversity of background and the nature of the claims of applicants, particularly for protection visas;
- the increasing complexity of migration and administrative law applying to Tribunal case decision-making; and
- the volume of cases on hand at the Tribunals and finalised by the Tribunals, where materially different from the caseload estimates and case finalisation targets which underpin Tribunal budgets.

Management structures and consultative arrangements

Management groups

3.6 Table 3.1 outlines the structure and membership of Tribunals' main management groups in 2005. These comprised:

- A **Joint Management Board (JMB)**, exercising strategic oversight of the Tribunal operations, including initiatives to achieve efficiencies.
- Two **Senior Management Groups (SMGs)**, respectively dealing with management and planning issues related to the MRT and the RRT.
- **Joint Management Meetings**, dealing with the management of the Registries and corporate functional areas.

3.7 These management groups had been established in December 2002.

3.8 ANAO review of Tribunal papers indicated that the Tribunal management groups were operating satisfactorily. In particular, the management groups met regularly (usually once a month), and meetings were well-attended. Video-conferencing facilities enabled Members and staff based in Melbourne to participate in proceedings. Agendas were prepared, and supporting papers were circulated, to group members ahead of meetings. The management groups maintained comprehensive records of their activities and identified matters requiring follow up action, arising out of meetings.

Table 3.1**Main management groups of the Tribunals, 2005**

Joint Management Board (JMB) The Principal Member (chair) The Deputy Principal of the RRT The Registrar One MRT Senior Member Representative		
MRT Senior Management Group (MRT SMG) The Principal Member (chair or nominee) The Registrar The Deputy Registrar MRT Senior Members District Registrars	RRT Senior Management Group (RRT SMG) The Principal Member (chair or nominee) The Deputy Principal of the RRT The Registrar The Deputy Registrar RRT Senior Members District Registrars	
Joint Registry and Corporate Management Meetings The Registrar (chair) The Deputy Registrar District Registrars Directors of Corporate Functional Areas		

Note: The Senior Management Groups of the Tribunals were combined in March 2005.

Source: ANAO analysis of Tribunal documentation.

Consultative arrangements

3.9 The Tribunals had two main joint structures for community liaison and staff consultation in relation to their operations, at June 2005:

- **Joint MRT/RRT Community Liaison Meetings**, as a forum for the Tribunals to exchange information with stakeholders, including migration and refugee advocacy groups, and government agencies.
- A **Joint Consultative Committee**, as a forum for Tribunal management to discuss matters including the joint certified agreement and human resources policies of the Tribunals with staff and union representatives.

3.10 Meetings of these joint forums were convened for the first time in April and May 2004, in place of each Tribunal's previous similar arrangements.

3.11 ANAO review of the operation of community liaison meetings in 2004 and 2005 indicated that they were useful, particularly as a platform for updating stakeholders on developments affecting Tribunal operations and for disseminating information on the Tribunals' procedures and caseload.

3.12 The Tribunals arranged these meetings with stakeholders in both Sydney and Melbourne, twice a year. The Principal Member and other Members and staff normally represented the Tribunals at the meetings, which were attended by a wide range of community and government stakeholders. The Tribunals also prepared records of matters discussed at meetings. These records were publicly accessible on the Tribunal websites.

3.13 Until recently, community liaison meetings were not extensively used by the Tribunals to obtain stakeholder input into matters such as draft operational policies and procedures which the Tribunals had under consideration. During 2006, the Tribunals invited stakeholders at liaison meetings to provide input into the development of draft Tribunal guidance regarding the assessment of the credibility of evidence given by review applicants and other persons. The Tribunals incorporated useful comments provided by representatives of various community organisations into the final published guidance, which was well received by stakeholders.¹⁰

¹⁰ The Tribunals also foreshadowed in October 2006 that they would consult with external stakeholders about the drafting of guidance on vulnerable persons.

3.14 The ANAO considers that the value of stakeholder consultation was demonstrated in this case, and it would be beneficial for the Tribunals to continue to invite stakeholder comments on similar relevant matters, through community liaison meeting processes. This initiative would be consistent with the Tribunals' intention, articulated in the 2005–07 corporate plan, of maintaining productive working relationships with stakeholders.

3.15 The Tribunals advised that stakeholder consultations had increased in the last 18 months and there had been several important developments in relation to making their operations more open and accountable. These included the on-line publication of the *Guide to Refugee Law in Australia* and the *Guidance on the Assessment of Credibility*. The Tribunals intend to continue to make greater use of the community liaison network to consult with stakeholders on key documents and changes in policies and procedures.

3.16 The ANAO found that, in addition to community liaison arrangements, the Tribunals participated in interagency liaison and networking arrangements with other agencies, tribunals and relevant bodies. In particular, the Tribunals and DIAC/DIMA have liaised regularly to discuss policy and operational issues relevant to their respective responsibilities. They have also invited each other to their major community consultative forums. A Memorandum of Understanding, signed in November 2005, covers their agreed liaison, information exchange and financial and business continuity arrangements.

3.17 The Tribunals also worked closely with other federal merits review tribunals. They have entered into memoranda of understanding with several tribunals on matters of mutual interest, and the Principal Member and the Registrar have participated in discussions associated with meetings of Heads of Tribunals.¹¹ In addition, the Tribunals actively participated in the national and State activities of the Council of Australasian Tribunals.

¹¹ Meetings of Heads of Tribunals are attended by the heads of the Administrative Appeals Tribunal, the MRT and the RRT, the Social Security Appeals Tribunal, the Veterans' Review Board and the National Native Title Tribunal. The Registrars of these tribunals meet at the same time as the Heads of Tribunals.

Risk management and fraud control plans

3.18 Managing risk involves systematically identifying, analysing and mitigating risks which could prevent an agency from achieving its business objectives. Risk management includes putting control activities in place to manage risk throughout the organisation by developing risk management and fraud plans. The ANAO assessed whether the Tribunals had a structured and systematic approach to risk management in relation to their operations.

3.19 The ANAO found that the Tribunals had developed a joint risk management plan for their operations. This plan was prepared as part of a business risk update and internal audit planning undertaken in February 2006. The plan identified the risks faced by the Tribunals, risk treatments in place, the residual risk and ongoing assurance activities (see Table 3.2).

Table 3.2

Tribunals’ joint business risk update and internal audit plan, 2006

Required elements	Incorporated	ANAO comment
Risk identification	✓	Internal and external risks to the achievement of the Tribunals’ goals were identified.
Risk treatment	✓	Control activities were implemented to minimise the identified risks.
Risk monitoring	✓	Ongoing assurance activities were scheduled for management review.

Source: ANAO analysis of Tribunal risk management documentation.

3.20 As part of its risk management framework, the Tribunals had a Joint Security Committee to oversight and review the Tribunals’ joint security policy relating to security risk exposure and security risk management measures.

3.21 In addition, the Tribunals had entered into a memorandum of understanding with other Commonwealth merits review tribunals,¹² to provide assistance to each other in the event of a disruption to services or facilities. Such an arrangement accords with sound business resumption planning.

¹² The three other tribunals were the Administrative Appeals Tribunal, the Social Security Appeals Tribunal and the Veterans’ Review Board.

3.22 The Tribunals also had a joint fraud control plan for 2005–07 (see Table 3.3). This plan detailed the Tribunals' strategic approach to fraud prevention, detection, investigation, prosecution and civil rights/privacy. The ANAO found that the plan complied with Commonwealth Fraud Control Guidelines.

Table 3.3

Tribunals' joint fraud control plan, 2005–07

Required elements	Incorporated	ANAO comment
Overall fraud control strategy	✓	Fraud Control Plan was based on fraud risk assessment.
Annual fraud report	✓	Annual fraud data are collected and reported to the Attorney-General's Department.
Staff training	✓	A program of fraud awareness workshops was conducted during 2005–06.

Source: ANAO analysis of Tribunal fraud control plan documentation.

Corporate, operational and functional plans

3.23 The strategic planning frameworks of agencies commonly include corporate plans and operational plans. Corporate plans are overarching plans. They usually set out the vision or mission of an agency, identify its corporate values, and define strategic directions and priorities for the medium-term.

3.24 Operational plans are usually more detailed plans, with a shorter-term planning horizon. Typically, they describe specific activities of the agency intended to give effect to strategies and priorities reflected in its corporate plan. Operational plans usually assign responsibility for the management of particular initiatives and set key milestones and target dates for the achievement of results. These plans are normally reviewed on an annual basis.

3.25 The ANAO assessed whether the Tribunals had developed:

- a corporate plan which set their strategic direction and provided a central reference point for other planning activities; and
- an operational plan which identified specific business activities and initiatives to give effect to their strategies and priorities.

3.26 The Tribunals had developed a joint Corporate Plan for 2005–07. This replaced separate MRT and RRT corporate plans which had been in force in 2001–04. While at a high level, the new joint corporate plan included appropriate elements (see Table 3.4).

Table 3.4**Tribunals' joint corporate plan, 2005–07**

Key elements	Incorporated	ANAO Comment
Tribunal goals and functions	✓	The plan includes a vision statement and a statement of the Tribunals' purpose.
Priorities	✓	The plan identifies what the Tribunals will do over the period 2005–07.
Monitoring and reporting arrangements	✓	The performance forecasts identify what success will look like.
Statement of corporate values	✓	The plan links to the Tribunals' Code of Conduct and the APS Values and Code of Conduct.

Source: ANAO analysis of Tribunal corporate plan documentation.

3.27 The Tribunals identified their individual Portfolio Budget Statements (PBS) as annual operational plans. They did not prepare a separate operational plan for their business activities and initiatives. The Tribunals referred to PBS as the primary planning documents for budget funded agencies and noted that these documents provide aggregated information about an agency's appropriations and budget measures (or variations); outcomes and output information (or variations); and budgeted financial statements. (This outcome and output information is separately analysed, in Chapter 4.)

3.28 The Tribunals also mentioned their annual caseload and constitution operational policy, in terms of their operational planning. This policy sets out the Tribunals' case priorities, arrangements for the allocation of cases to Members, the nature of staff support for Members, and productivity expectations for Members. The Tribunals noted that their time standards for case processing are specified in another key operational policy.

3.29 The ANAO observed that the Tribunals' PBS and caseload and constitution operational policy are not intended to outline the allocation of management responsibilities and timeframes for major business activities and initiatives, or to incorporate comprehensive organisational performance indicators used for management reporting—this information is typically organised in an operational plan.

3.30 Operational plans can be especially valuable in the planning, management and coordination of major organisation changes. As outlined in Chapter 2, the Tribunals implemented a series of major efficiency improvements to align the Tribunals from 2001 onwards. In addition, the MRT in 2005–06 introduced revised MRT-specific work practices whereby Tribunal

Members are allocated cases to review without Registry officers first having completed a comprehensive examination and report on cases issues. This change required significant adjustment to the work of Members and staff. In 2005–06, both Tribunals also introduced a new joint case management system, which involved substantial change for Members and staff. The ANAO considers that the development of an annual operational plan would be of assistance to the Tribunals, both in the overall planning and coordination of ongoing changes, and in the clear allocation of management and staff responsibilities and milestones and target dates for particular initiatives.

3.31 The Tribunals advised that a Tribunal Plan was being developed and was expected to be in place soon. This document, together with the caseload and constitution policy, would provide a framework for identifying strategic, case management and operational changes, priorities and responsibilities.

3.32 The Tribunals also had a considerable range of performance information to be collected and reported, for internal management and external accountability purposes. The ANAO collated a list of this performance information and where requirements for it could be found in Tribunal documentation (see Table 3.5).

3.33 The ANAO considers that the Tribunals would benefit from the design and use of such a consolidated performance information framework, to be prepared on an annual basis as part of operational planning. This document would help the Tribunals to more systematically identify, collect, monitor and report key performance information. It would also provide the basis for strengthened management oversight of Tribunal operational performance.

3.34 The Tribunals agreed that developing a formal performance information framework would assist in identifying and defining key performance information. The Tribunals noted that there is regular, structured, caseload reporting to the Joint Management Board and Senior Management Group.

Table 3.5**Performance information identified by the Tribunals as required, 2005**

Performance information	Where the information requirement is specified
Caseload	
Case lodgements	Funding agreement with Finance Case management reports and Annual Report
Cases on hand	Funding agreement with Finance Case management reports and Annual Report
Case finalisations	Funding agreement with Finance and PBS Case management reports and Annual Report
Case outcomes	
Case outcomes (set aside rate)	Case management reports and Annual Report
Processing timeliness	
Cases on hand	Case management reports and Annual Report
Case finalisations	PBS (broad requirement) Case management reports and Annual Report
Case prioritisation	Case management reports and Annual Report (limited requirement)
Member performance	
Caseload allocations with Member	Case/other management reports
Age of cases with Member	Case/other management reports
Case work days	Other management reports (partial requirement-RRT)
Productivity	Case/other management reports and Annual Report
Costs	
Tribunal expenses	Funding agreement with Finance and PBS Case management reports and Annual Report
Tribunal unit costs	Funding agreement with Finance
Judicial reviews	
Judicial reviews	PBS, other management reports and Annual Report
Complaints	
Complaints	PBS and Annual Report (limited requirement)
Tribunal impact/outcome	
Correct and preferable decisions	PBS

Source: ANAO analysis of performance information requirements as specified in Tribunal papers.

Recommendation No.1

3.35 The ANAO recommends that, to enhance their planning and performance monitoring capability, the Tribunals:

- develop an annual operational plan which identifies priorities for major business activities and initiatives, and allocates responsibilities and specifies timeframes for their implementation; and
- prepare an annual performance information framework which consolidates details of Tribunal performance information which is required to be collected and reported for accountability purposes.

Tribunals' response

3.36 The Tribunals agree with this recommendation.

Functional plans

3.37 Functional plans are business or operational plans for specific functional activities or issues, such as workforce development or disability action planning, which cut across the organisational units of an agency.

3.38 The ANAO reviewed whether the Tribunals had separate functional plans to deal with identified major issues affecting their operations and there were linkages between the Tribunals' corporate plan and these plans.

3.39 The ANAO found that the Tribunals had a number of functional policy and planning documents, covering workforce planning, occupational health and safety, security, workplace diversity, and people with disabilities. The Tribunals' corporate plan explicitly stated how they aimed to meet the objectives of their workplace diversity, workplace safety and other workforce plans and programs. Details of these specific functional policy and planning documents were not further assessed as part of this audit.

Resourcing

3.40 The Tribunals' funding from Budget Appropriations underpins the Tribunals' capacity to deliver outputs, in terms of case finalisations.

3.41 Tribunals' resourcing since 2000 was specified in three funding agreements between the Tribunals and the Department of Finance and Administration (Finance), made in 2000, 2002 and 2004 (see Table 3.6).

Table 3.6

Tribunal funding arrangements, 2000 to 2006

Description	Nature of arrangement	Key dates	Period in operation
2000 purchasing agreements	Separate agreements for MRT and RRT	Commenced Jul 1999 Signed Oct/Nov 2000	1999–2000 to 2001–02 (3 years)
2002 purchasing agreements	Separate agreements for MRT and RRT	Commenced Jul 2002 Signed Nov 2002	2002–03 to 2003–04 (2 years)
2004 funding arrangement	Combined arrangement for MRT and RRT	Agreed Apr 2004 Commenced Jul 2004	2004–05 onwards (Ongoing)

Source: ANAO analysis of Tribunal papers.

Current funding agreement with Finance

3.42 Table 3.7 shows key features of the Tribunals' current funding arrangement. The ANAO assessed whether this arrangement provided the Tribunals with an adequate resourcing framework for planning and managing their operations, including dealing with changes in caseload and costs.

3.43 The ANAO found that the Tribunals and Finance had agreed to an adequate funding arrangement which provided the Tribunals with a more assured resource base than had existed under previous agreements.

3.44 In particular, the alignment of 2004–05 base year funding of the fixed and variable components of Tribunal funding with their previous year's actual costs meant that the Tribunals had a realistic funding base from which to pursue further efficiency improvements. Indexation of base year funding for future years also provided the Tribunals with additional funding to meet cost increases, which the Tribunals had absorbed under previous agreements.

3.45 The incorporation of a fixed component in the funding arrangement lessened the potential impact on Tribunal resources from unforeseen sharp drops in future case finalisations. Previous agreements had provided for full variable funding of the Tribunals based on their case finalisations, so a drop in case finalisations reduced Tribunal resourcing by the specified full unit cost.

Table 3.7**Key features of the Tribunals' current funding arrangement**

- A single, combined funding framework for the two Tribunals, reflecting the increasing integration of their management and operation.
- The split of each Tribunal's funding into a fixed component (75 per cent) and a variable component (25 per cent), the latter based on the annual number of case finalisations and the specified unit cost per case.
- The base year funding of fixed and variable components being derived from actual 2003–04 costs; with indexation of these components; and mechanisms for funding adjustments for particular cost increases which are outside of Tribunal control.
- The continuation of previous arrangements for initial annual Tribunal funding on the basis of case finalisation targets, adjusted in the following year for actual case finalisations.
- Projected decreases in MRT and RRT case finalisations over the next four years by about 4 and 6 per cent per annum.
- The reduction of RRT fixed costs by 8 and 6.5 per cent in 2005–06 and 2006–07, reflecting projected lower RRT caseload and the timing of planned Tribunal efficiency improvements.
- The 2004 funding arrangement to be ongoing, with the Tribunals to review its continued operation in consultation with Finance in 2007–08.

Source: ANAO analysis of Tribunal papers.

3.46 The Tribunals' successive funding agreements have provided mechanisms for the adjustment of their case finalisation targets and for their funding on the basis of actual outputs. In particular, annual Tribunal case finalisation targets for the forthcoming year may be set at levels different from targets in the current funding agreement, through the PBS process. These PBS targets may be further adjusted during the year, through the Portfolio Additional Estimates Statements (PAES) process. Where actual case finalisations at the end of the year vary from PAES targets, funding adjustments which reflect those differences are made in Tribunal appropriations in the following year.

3.47 Notwithstanding the strengthening of the Tribunals' resource position under the 2004 funding agreement and provisions for adjustment of targets in successive agreements, the Tribunals do face risks to their resourcing, particularly if their actual case finalisations are materially lower than projected. Such a situation could arise for various reasons, including weaknesses in the Tribunals' estimation processes and/or inherent difficulties in the estimation of case finalisations; as well as external environmental factors which are not within the Tribunals' control and/or internal performance factors

which affect case finalisation output and productivity.¹³ This risk exposure was borne out in the first year of the Tribunals' current funding agreement, when their case finalisations fell substantially short of their 2004–05 targets.¹⁴

Tribunal resource and case finalisation estimation

3.48 As part of the development of the 2004 funding arrangement, the Tribunals estimated their resource requirements and prepared case finalisation targets. The ANAO assessed key aspects of the Tribunals' preparatory work.

3.49 The ANAO found that the Tribunals' 2004 funding proposal included comprehensive information on Tribunal initiatives to achieve operational efficiencies and to deal with changing caseloads; analysis of fixed and variable costs; costings of two major initiatives; and coverage of caseload trends and forecasts. Advice from Finance assisted the development of the proposal.

3.50 The Tribunals' funding proposal also contained reasonable case finalisation targets for 2004–05, based on their recent case finalisation performance and other information known to the Tribunals at the end of March 2004. However, it was subsequently necessary to make substantial downward revisions to these targets during 2004–05, following Government decisions, announced in June–July 2004, to reduce the total number of Tribunal Members and to introduce visa changes for temporary protection visa holders.

3.51 Although a wide range of information was assembled to support the Tribunals' funding proposal, the ANAO identified areas where the 2004 funding proposal could have been further strengthened. It would be appropriate for the Tribunals to give more attention to these areas when Tribunal resource and case finalisation estimates are prepared in the future.

¹³ Two particular factors that may contribute to the variation between case finalisation targets and actual case finalisations were mentioned by the Tribunals. Firstly, case finalisation targets are set well in advance of the period to which they relate. PBS targets are determined five months prior the commencement of the financial year, while PAES targets are determined six to seven months before the end of the year. Secondly, the appointment and reappointment of Members, as well as changes in legislation, case law and policy, may have a significant impact on output or productivity during a year.

¹⁴ MRT and RRT case finalisations fell short, by 19 per cent and 44 per cent, of original targets:

Tribunal	Case finalisation targets and results, 2004–05			
	PBS target	PAES target	Actual case finalisations	Variation from PBS target
MRT	10 200	9 280	8 308	19 per cent
RRT	5 400	4 360	3 033	44 per cent

Source: ANAO analysis of Tribunal performance information.

Scenario planning

3.52 In the course of the development of the funding proposal, the Tribunals did recognise that future operations might be affected by some uncertainties. These included factors such as the expiry of the terms of appointment of most current Tribunal Members and volatility in the caseload of the RRT, which were not within the control of the Tribunals.

3.53 In such a situation, the Tribunals could have undertaken more systematic scenario planning in 2003–04 of the impact of potential major adverse changes to Tribunal Member resources or caseload on their operations. Consideration of such scenarios as part of future Tribunal resource and caseload estimation processes would put the Tribunals in a better position to deal with any contingencies which might arise, by anticipating problems from potential changes and by preparing possible courses of action in advance.

Service quality implications of case finalisation targets

3.54 The Tribunals' funding proposal aimed to reduce the backlogs of cases on hand at the Tribunals in 2004–05, but did not identify what changes to the quality of service experienced by applicants (measured in terms of case processing times) were likely to result from proposed case finalisation targets.

3.55 There would be benefit in the Tribunals specifically addressing in future funding proposals the extent to which their case finalisation targets are expected to contribute to the maintenance or improvement of client service quality. This would reinforce the Tribunals' focus on meeting one of their statutory objectives, which is to provide a quick mechanism of review.

Guidance

3.56 Appropriate authoritative guidance on the operational policies and procedures of the Tribunals is essential for Members and staff to perform their duties effectively, efficiently and consistently. This guidance includes Ministerial directions, and directions and guidelines issued by the Tribunals.

3.57 Policy directions on the responsibilities of the Principal Member and Members of the Tribunals, and on streamlining measures to improve the Tribunals' decision-making systems and productivity, were issued by the Minister for Immigration and Multicultural Affairs in June 1999 (see Table 3.8).

Table 3.8

MRT and RRT Ministerial Directions, issued 1999

MRT and RRT Ministerial Directions	
Authority	Policy directions of the Minister, issued in June 1999, under s 499 of the Migration Act.
Coverage	<p><i>Direction on the role and responsibilities of the Principal Member</i>, which are to include:</p> <ul style="list-style-type: none"> the implementation of a performance management program; review of performance agreements; setting of performance targets and priorities in relation to case processing; and the issue of practice directions on the recording of decisions, concerning <i>ex tempore</i> decision-making, and about reviewing primary decisions. <p><i>Direction on the role and responsibilities of Members</i>, which are to include:</p> <ul style="list-style-type: none"> following the directions and leadership of the Principal Member and adherence to guidelines, directions, practice directions and instructions issued by the Principal Member; restricting their relationship with migration agents to a professional level; giving significant weight to leading decisions by fellow Members; and seeking to maintain a high level of client service; and aiming to improve productivity. <p><i>Direction on streamlining measures</i>, including Members giving due consideration to:</p> <ul style="list-style-type: none"> advising applicants that, in the absence of good cause for not attending notified hearings, the Tribunal may proceed to a decision without delay; making greater use of ways of obtaining evidence other than by personal hearings; making <i>ex tempore</i> decisions; and processing applicants in accordance with any guidelines issued by the Principal Member relating to the order of processing cases.
Application	Particular directions apply to the Principal Member or delegate, or to all Tribunal Members.

Source: ANAO analysis of MRT and RRT Ministerial Directions, 1999.

3.58 In addition to Directions given by the Minister, the Migration Act provides for the Principal Member of the Tribunals to give directions and determine guidelines on various aspects of the operation of the Tribunals.

3.59 The ANAO assessed whether:

- the Tribunals had issued directions, instructions and guides, which adequately cover their case processing and decision-making operations;
- Members and staff had ready access to these sets of Tribunal operational policy and procedural guidance; and
- Tribunal operational policy and procedural guidance were regularly reviewed and updated.

Tribunal operational policy and procedural guidance

3.60 The ANAO found that each Tribunal had a number of types of operational policies and procedural guidance relating to their case processing and decision-making operations. Table 3.9 shows the main types.

3.61 The Tribunals did not have a current overview guide which described the types of guidance which are in force. Such an overview would assist Members and staff to better understand the types of guidance, their authority and relative standing, and the interrelationships between types of guidance.

3.62 The major aspects of the case processing and case decision-making operations of the Tribunals were outlined in Principal Member Directions on the general conduct of reviews and on caseload and constitution policy. These directions, issued between March and October 2005, included coverage of procedural provisions for MRT and RRT casework in the Migration Act.

3.63 Most types of guidance identified its issuer. However, recent Tribunal guidelines on the assessment of credibility and on taking evidence from children did not indicate its issue by the Principal Member. The inclusion of such information on all Tribunal guidance would help clarify its standing.

3.64 The range of operational policies and procedural guidance for Tribunal Members and staff was electronically accessible through the Tribunal Intranet.

Table 3.9

Tribunal operational policy and procedural guidance, June 2005

MRT and RRT Principal Member Directions	
Authority	Principal Member Directions (PMDs) are issued for the MRT under ss 353A and 397 of the Migration Act and for the RRT under ss 420A and 460 of the Act.
Coverage	Directions cover the operation of the Tribunals; the conduct of reviews; and allocation of work. Examples of Principal Member Directions were: PMD-1/2005- <i>MRT caseload and constitution policy</i> , on the allocation of cases to Members. PMD-RRT <i>caseload and constitution policy 2005–06</i> . PMD-2/2005- <i>Efficient conduct of MRT reviews</i> . PMD-3/2005- <i>Efficient conduct of RRT reviews</i> .
Application	Particular Directions apply to Tribunal Members and to Tribunal staff.
MRT and RRT Practice Directions	
Authority	Practice Directions were issued by the Principal Member for the MRT under s 353A of the Migration Act and for the RRT under s 420A of the Act.
Coverage	Practice Directions were general guides to the procedures of the Tribunals, intended to facilitate their proceedings and ensure consistency in Tribunal practices across the Registries.
Application	Practice Directions were binding on Tribunal Members and staff, and on parties appearing before the Tribunals.
Status	MRT Practice Directions dated Sep 1999 were available on the Tribunal Intranet site in May 2005. Their operational status was unclear. They had been under review in May 2002. RRT Practice Directions dated Jul 2003 were also available on the Tribunal Intranet site in May 2005. They remained in force until Oct 2005.
Chief Executive Officer (CEO) Instructions	
Authority	Instructions of the Principal Member, as Chief Executive, are issued under s 52(1) of the <i>Financial Management and Accountability Act 1997</i> .
Coverage	Matters covered include the proper use, management and accountability for public money, public property and other resources of the Commonwealth.
Application	CEO Instructions apply to all employees (both Members and staff) of the Tribunals.
MRT Principal Member and Registrar Advices	
Authority	MRT Advices were issued by the Principal Member and Registrar respectively.
Coverage	Principal Member Advices included advice on Migration legislation and Court decisions. Registrar Advices included advice relating to Tribunal operations and the conduct of reviews. Examples of Registrar Advices were: Registrar Advice 2/2001: <i>Waiver Fee Policy</i> . Registrar Advice 2/2002: <i>Calculating Time Limits for Applying for Review</i> .
Application	Registrar advices may apply to Tribunal Members and staff.
Status	The Tribunal Intranet site in May 2005 listed MRT Principal Member Advices dated 2000 to 2004 and MRT Registrar Advices dated 2000 to 2002. There were no RRT Advices.

Administrative Circulars	
Authority	Administrative Circulars were issued by the Principal Member and the Registrar.
Coverage	Administrative Circulars relate to staffing and financial matters and procedural issues which regulate the day-to-day operations of Tribunal staff.
Application	Administrative Circulars may apply to Tribunal Members and staff.
Status	MRT Administrative Circulars dated 1999 to 2003, and RRT Administrative Circulars dated 1994 to 2004, were held on the Tribunal Intranet site in May 2005. Some MRT Circulars were stated to be Principal Member Directions. A number of the Circulars were also replaced by guidance designated as Principal Member Directions in 2004 and 2005.
MRT Handbook	
Authority	The MRT Handbook was issued by the Principal Member.
Coverage	The Handbook covered the policies and the procedures of the Tribunal.
Application	The Handbook was issued only to Tribunal Members, and had to be kept in their safe custody.
Status	The Handbook was dated March 2000, and had a revised foreword dated July 2002. It was available on the Tribunal Intranet site in May 2005. Its operational status was unclear. The RRT did not have an equivalent Handbook listed on the Tribunal Intranet site in May 2005.
Tribunal policy and procedures guidelines	
Authority	Tribunal policy and procedures guidelines are issued by the Senior Policy Officer in the Principal Registry.
Coverage	Policy and procedures guidelines assist in the administration of Principal Member Directions. An example was Guideline-1/2004: <i>Publication of Decisions of Particular Interest</i> .
Application	Policy and procedural guidelines were issued for the guidance of Tribunal Members and staff.
Ad hoc Tribunal guidance	
Authority	Ad hoc guidance documents have also been issued by the Tribunals, sometimes without their issuer being clearly identified.
Coverage	Recent examples of such ad hoc guidance are: <ul style="list-style-type: none"> • <i>Guidance on the Assessment of Credibility</i>-October 2006 sets out general guidance concerning the assessment of credibility by the Tribunals. • <i>RRT Guidelines on Children Giving Evidence</i> provides guidance regarding procedures for taking evidence from children.
Application	<i>Guidance on the Assessment of Credibility</i> is for use by Tribunal Members, review applicants and representatives. <i>RRT Guidelines on Children Giving Evidence</i> is for use by Members.

Source: ANAO analysis of procedural guidance on the Tribunal Intranet site, May-June 2005.

3.65 As indicated in Table 3.9, the Tribunals had several key policy and procedures documents whose operational status was unclear. Some procedural guidance had also not been updated for many years.

3.66 The Tribunals advised that a review of all operational policies and guidelines was completed in October 2006. The Tribunals provided the ANAO with a list of 31 documents which contained current Ministerial and Tribunal directions, advice and guidelines covering aspects of the operation of, and conduct of reviews by, the Tribunals (summarised in Table 3.10). The Tribunals also advised that more than 90 directions, advices and circulars, including some dating back to 1994, were revoked in November 2006.

Table 3.10

Documents containing current Ministerial and Tribunal operational policy and procedural guidance, March 2007

Types	MRT-RRT	MRT	RRT	Total
Ministerial Directions	-	3	3	6
Principal Member Directions	2	2	1	5
Principal Member Advices	-	2	-	2
Registrar Advices	-	3	-	3
Administrative Circulars	1	1	3	5
Tribunal Policy and Procedures Guidelines	5	3	-	8
Guidance and Guidelines	1	-	1	2
Total	9	14	8	31

Source: ANAO analysis of procedural guidance on the Tribunal Intranet site, March 2007.

3.67 While noting the action taken by the Tribunals to review operational policy and procedural guidance, the ANAO considers that there would be benefit in the Tribunals clarifying and articulating the rationale for the various separate types of guidance which are in force to Tribunal Members and staff.

Updating operational policies on allocation of cases to Members

3.68 Principal Member Directions on caseload and constitution policies were key operational policies produced by the Tribunals, usually on an annual basis. These documents were important, as they set out case productivity targets for Members and the framework for the allocation of casework to Members.

3.69 The ANAO found that the dates of issue and effective commencement of the operational policy of each Tribunal for each year in recent years were quite variable (see Table 3.11). The synchronisation of the key dates for these policies would have been desirable, as the Tribunals operated on a common financial year cycle, and were increasingly integrating their operations.

3.70 The issue of a new single Principal Member Direction on caseload and constitution policy on 21 June 2006, which applied to both the MRT and the RRT with effect from 1 July 2006, synchronised the key dates for the operational policy on allocation of all Tribunal cases to Members.

Table 3.11

Key dates for Tribunal caseload and constitution policies, 2004 and 2005

Year	MRT		RRT	
	Date of issue	Date of commencement	Date of issue	Date of commencement
2004–05	26 May 2004	01 Jul 2004	27 Apr 2004	01 May 2004
2005–06	31 Mar 2005	01 Apr 2005	24 May 2005	01 Jul 2005

Source: ANAO analysis of Tribunal papers.

3.71 During 2004–05, the Tribunals made changes to these operational policies on three occasions, through Joint Management Board decisions. These decisions modified the allocation of work to Tribunal Members and to MRT Member case targets. However, the operational policies were not amended. The ANAO considers that it would be appropriate to issue revised directions in such circumstances, to provide an authoritative basis for the changes.

Provision of up-to-date procedural guidance for Tribunal staff

3.72 It is important that Tribunal staff have access to appropriate procedural guidance to assist them to perform their case processing duties effectively.

3.73 The ANAO found that Tribunal staff engaged in initial case processing, tribunal support and post-decision case finalisation work did not have authoritative and up-to-date procedural guidance in 2005. Many of these staff were in junior administrative positions and included non-ongoing and casual employees. Some staff used local procedural guides prepared in their operational areas to support their work. At that time, manuals produced by the Sydney and Melbourne Registries for RRT operations were under review, to bring them up-to-date; the Melbourne Registry manuals had been issued between 2000 and 2002. The operational performance of Tribunal support staff

in the Registries would be assisted by provision of up-to-date, on-line guidance on case processing and post-decision case finalisation procedures. This would provide staff with ready access to authoritative Tribunal guidelines and would help promote consistency in work practices.

3.74 The Tribunals advised that on-line guidance, Standard Case Procedures, was now available to assist staff. This covered case processing procedures and use of the Tribunals' CaseMate case management system.

Ethical standards for the conduct for Tribunal Members and staff

3.75 All Tribunal Members are required to act according to a Member Code of Conduct. Members sign a performance agreement at the time of their appointment. This requires them to act in accordance with, and in the spirit of, the principles set out in the Member Code of Conduct.

3.76 A joint Member Code of Conduct replaced separate MRT and RRT codes in January 2006. This Code provided that Members should behave with integrity, propriety and discretion, and treat applicants, representatives and other persons with respect, courtesy and dignity. The Code also covered Member productivity, consistency, work quality, timeliness and efficiency.

3.77 Tribunal staff were required to act according to the Australian Public Service (APS) Values and APS Code of Conduct. Tribunal recruitment guidelines included references to the APS Values and APS Code of Conduct.

Conclusion

3.78 The governance arrangements of the Tribunals for case processing and case decision-making operations were sound in most respects. In particular, the Tribunals' management structures were operating satisfactorily, and appropriate arrangements for consultation with stakeholders were in place. A risk management plan and a fraud control plan had been developed to deal with risks to operations. The Tribunals' funding arrangement with Finance had been based on solid preparatory work, and provided the Tribunals with a more assured resourcing base than had existed under previous agreements.

3.79 The Tribunals had developed a new joint corporate plan that included appropriate elements, albeit at a high level. However, the Tribunals did not have a separate annual operational plan for their business activities and initiatives. The development of an annual operational plan and the preparation of an annual performance information framework would enhance the

Tribunals' capability to plan and assign responsibilities for business initiatives and to monitor and report on performance.

3.80 The Tribunals had in place a wide range of operational policies and procedural guidance, to assist Members in case processing and decision-making. Key guidelines covered the general conduct of reviews and arrangements for the allocation of casework to Members. A Code of Conduct also set out the ethical standards expected of Members in the course of their appointment. On-line guidance on case processing procedures is now available to Registry staff who previously did not have authoritative and up-to-date guidelines. Notwithstanding these positive features of Tribunal procedural guidance, Members and staff would benefit from the issue of an overview guide which described the various types of guidance in force.

4. Performance Indicators

This Chapter examines the performance indicators which the Tribunals have developed for the measurement and assessment of their performance.

Performance information

4.1 Performance information is quantitative or qualitative evidence about performance that is collected and used systematically to assist management decision-making and reporting on an agency's achievement.

4.2 Performance information is most effective where it provides comprehensive and balanced coverage of the outcomes and outputs of an agency, through the specification of a concise set of performance indicators. These indicators should be easy to understand and clearly defined, and enable comparison of performance against targets or activity levels.

4.3 Published performance information, which provides a top-level strategic overview of performance for external accountability needs, should be supported by more detailed internal management information which enables diagnosis and continuous improvement of the performance of an agency.

4.4 This Chapter examines the Tribunals':

- overall set of performance information, which was published in their Portfolio Budget Statements (PBS) for 2004–05;
- specific targets for case finalisations and unit costs, set out in funding agreements between the Tribunals and Finance since 2000;
- specific priorities and time targets for the finalisation of cases; and
- specific productivity targets for case decision-making by Members.

4.5 Chapter 5 examines Tribunal performance against these indicators.

Tribunal performance information in PBS

4.6 Like other agencies, the Tribunals are required to prepare PBS which identify their outcomes, outputs and related performance information, for the purpose of informing the Parliament of the resource allocations to government outcomes proposed in Appropriation Bills. Table 4.1 defines these terms.

Table 4.1

Outcomes, outputs and performance indicators-definitions

Term	Definition
Outcomes	Outcomes refer to the <i>results that the Government wants to achieve</i> for the Australian community in a particular area of public policy and administration.
Outputs	Outputs refer to <i>the goods and services</i> that agencies provide to help achieve these results.
Performance indicators	<p>Performance indicators refer to the <i>benchmarks or targets</i> that agencies use to measure their performance.</p> <p><i>Targets</i> express quantifiable performance levels or changes of level to be attained at a future date, as opposed to a minimum level of performance.</p> <p>Performance indicators comprise:</p> <ul style="list-style-type: none"> • <i>effectiveness indicators</i> which measure the <i>effectiveness</i> of outputs in contributing to desired outcomes, and • <i>efficiency indicators</i> which measure the <i>efficiency</i> of outputs – their quality, quantity and price.

Source: Department of Finance and Administration <<http://www.dofa.gov.au/gf/>>

4.7 In 2004–05, each Tribunal had a separate entry setting out their outcomes and outputs frameworks in the Immigration and Multicultural and Indigenous Affairs Portfolio PBS; this accorded with their status as two independent agencies within the portfolio. Their respective outcomes and outputs frameworks identified one outcome and one output. However, consistent with their increasing co-operation, the Tribunals had a common set of performance indicators for their outcomes and outputs. Table 4.2 shows the Tribunals' outcomes, outputs, and performance information and indicators.

Table 4.2

Tribunal Portfolio Budget Statements 2004–05

PBS entries	ANAO comment
<p>MRT outcome</p> <p>To contribute to ensuring that the administrative decisions of government are correct and preferable in relation to non-humanitarian entrants.</p> <p>RRT outcome</p> <p>To contribute to ensuring that Australia meets its obligations pursuant to the Convention relating to the status of refugees.</p>	<p>The outcomes and outputs of both Tribunals were stated succinctly, results-focused and were free of aspirational language.</p> <p>The outputs of both Tribunals were adequately described and were aligned to their outcomes.</p> <p>The target group for MRT output could be more clearly specified as <i>applicants for migration and temporary entry and stay</i>.</p> <p>The nature of the decisions reviewable by the Tribunals for MRT and RRT outputs could more clearly stated as <i>visa-related</i> decisions.</p>
<p>MRT output</p> <p>Independent merits review of certain decisions concerning applicants for non-humanitarian entry and stay.</p> <p>RRT output</p> <p>Independent merits review of decisions concerning applicants for refugee status.</p>	
<p>Tribunal performance information on the achievement of outcomes</p> <p>Decisions are correct and preferable.</p>	<p>The term, <i>correct and preferable</i> decisions, was not explained in the Tribunals' PBS entries. This term has a particular technical-legal meaning for the Tribunals, which should be explained.</p>
<p>Tribunal effective indicators for measuring the contribution of outputs to outcomes</p> <p>Outcome of applications for judicial review.</p>	<p>The effectiveness indicator for the contribution of Tribunals outputs to outcomes was not sufficiently comprehensive. The Tribunals' set aside of DIMA primary decisions was not identified as an effectiveness indicator. This could be regarded as the Tribunals' principal contribution to outcomes.</p>
<p>Tribunal efficiency indicators for measuring the efficiency of outputs</p> <p><u>Price:</u></p> <p>MRT: \$21.6 million.</p> <p>RRT: \$24.9 million.</p> <p><u>Quantity:</u></p> <p>MRT: 10,200 cases to be finalised.</p> <p>RRT: 5,400 cases to be finalised.</p> <p><u>Quality:</u></p> <p>Level of appeals against Tribunal decisions.</p> <p>Complaints received.</p> <p>Extent to which time standards are met.</p>	<p>The efficiency indicators of the Tribunals identified price, quantity and quality.</p> <p>Quality indicators covered three important aspects of Tribunal output.</p> <p>Targets were not set for these three quality aspects as a basis for performance comparison. (The Tribunals' time targets, reported in their Annual Reports, could be published in the PBS.)</p>

Source: ANAO analysis of Tribunal PBS 2004–05.

4.8 The ANAO assessed the adequacy of the Tribunals' outcomes and outputs frameworks and performance information in their 2004–05 PBS.¹⁵ The ANAO focused on whether the Tribunals' statements of outcomes, outputs and performance information were clear and concise; and their performance indicators were sufficiently comprehensive and expressed in terms of targets. The ANAO also reviewed changes made to the Tribunals' outcomes and outputs frameworks since 2004–05.

Specification of Tribunal outcomes and outputs

4.9 The ANAO found that the outcomes and outputs of the Tribunals in their 2004–05 PBS were concisely stated, and their outputs were aligned with identified outcomes. However, both their outcomes and outputs were not as clear as would be desirable, in that they did not state that the MRT's jurisdiction related to the decision-making in relation to temporary entry and migration cases and that the decisions reviewable by the Tribunals were visa-related decisions.

4.10 The Tribunals' performance information for measuring their contribution to outcomes was also not clear. The PBS identified 'correct and preferable decisions' as the performance information for measuring their achievement of outcomes, but did not further explain this term. Minor changes to the Tribunals' PBS would clarify their outcomes and outputs frameworks.

4.11 The Tribunals incorporated a new joint outcome and output statement for the MRT and the RRT into their 2006–07 Portfolio Additional Estimates Statements (PAES).¹⁶ This statement was an improvement on their previous statements, in that it identified the Tribunals' target groups, the visa-related nature of decisions which they may review, and key attributes of their merits review. However, the new statement did not include the previous reference to the Tribunals' contribution to decision-making. Nor did it refer to the correctness of decisions, even though an effectiveness indicator relating to the quality and consistency of administrative decision-making was retained.

¹⁵ This was the latest PBS for which a related Annual Report was available at the time of audit examination.

¹⁶ The Tribunals' 2006–07 PAES specified their outcome and output as follows:

Outcome: To provide visa applicants and sponsors with fair, just, economical, informal and quick reviews of migration and refugee decisions.

Output: Final, independent merits review of decisions concerning refugee status and the refusal or cancellation of migration and refugee visas.

Consideration could be given to further revision of the Tribunals' outcome statement, to cover all of the elements identified above.¹⁷

Specification of Tribunal performance indicators

4.12 The ANAO found that the Tribunals' effectiveness indicator for measuring their contribution to outcomes in their 2004–05 PBS was not expressed in positive terms and was not sufficiently comprehensive. Their effectiveness indicator focused on the outcome of applications for judicial review of Tribunal decisions. However, this indicator was expressed operationally in terms of the extent to which Tribunal decisions which were subject to judicial review were set aside by consent or Court judgment and returned to the MRT or the RRT for reconsideration, rather than in terms of the extent to which Tribunal decisions subject to judicial review were upheld.

4.13 This effectiveness indicator also provided only partial coverage of the Tribunals' contributions to desired outcomes of correct and preferable decision-making. It would, therefore, be useful for the Tribunals to identify additional indicators, to enable a broader assessment of their contributions.

4.14 One possible additional indicator would be the Tribunals' actual rate of set aside of DIAC primary decisions. This indicator measures the extent of the Tribunals' contribution to correct decision-making which is beneficial to review applicants, based on the administrative reconsideration of their case, including further evidence not available at the time of the primary decision.

4.15 While information about set aside rates is already provided in their Annual Reports, the Tribunals indicated reservations regarding the appropriateness of their set aside rate as an effectiveness indicator, as there is no 'ideal' set aside rate. The ANAO also recognises this and considers, that if this indicator were to be used, it would be necessary for the Tribunals to carefully explain that their set aside rates may reasonably be expected to vary over time, because of changes in their case mix and other relevant factors.

4.16 Other possible additional indicators would be the Tribunals' issue of statements of case decisions and reasons to review applicants and DIAC, and the Tribunals' wider community publication of selected decisions which are

¹⁷ A possible outcome statement which would incorporate all of the identified elements could be expressed as follows: 'To contribute to correct migration and refugee administrative decision-making by providing visa applicants and sponsors with fair, just, economical, informal and quick reviews'.

Another Tribunal, the AAT, structured its 2006–07 PBS outcome statement in a form similar to this. The roles of the AAT and the MRT and the RRT are broadly comparable, in that the three Tribunals provide independent merits review of administrative decisions over which they have jurisdiction.

considered to be of particular interest. Both of these arrangements contribute to correct decision-making, by informing stakeholders about the basis for Tribunal administrative decisions in relation to migration and refugee visas.

4.17 The Tribunals incorporated a revised effectiveness indicator for measuring their contribution to outcomes in their 2005–06 and 2006–07 PBS. The new indicator is the extent to which the Tribunal contributes to the quality and consistency of decision-making. This indicator was not further defined in the PBS and the means by which it is to be measured was not identified. Another effectiveness indicator was added in the Tribunals' 2006–07 PAES: professional and effective working relationships with stakeholders. However, the Tribunals did not further define this additional indicator, nor identify effectiveness measures for the indicator. In order to strengthen accountability for performance to the Government and the Parliament, it would be desirable to set out the basis for assessing the Tribunals' overall effectiveness in the PBS and PAES.

4.18 The Tribunals' efficiency indicators for their outputs covered several important aspects of these outputs: their cost; the volume of case finalisations; the timeliness of decisions; and dissatisfaction of review applicants with decisions and/or services. However, a target was set for only the number of cases to be finalised each year. None of the other three indicators incorporated a performance target or identified an alternative basis for comparison, where it might have been difficult to set a target. The ANAO noted that time targets for case decision-making were published in the PBS entries of other agencies which performed similar functions to the Tribunals.¹⁸

4.19 The ANAO considered that it would be desirable for the Tribunals to specify time targets for case finalisations, and to identify other bases of comparison for the level of appeals against Tribunal decisions and for complaints in their PBS. This would reinforce the Tribunals' commitment to the improvement of the quality of services, and provide users of PBS with a clearer basis for the assessment of Tribunal operational performance.

4.20 The Tribunals noted that time standards for protection visas and bridging visa (detention) cases were set out in Migration legislation and that time standards for all other cases were specified by the Tribunals in Principal Member Directions in October 2005, and are now published on the Tribunal

¹⁸ For example, DIMA included targets for the timeliness of processing of primary migration and protection visa decisions in its PBS. The AAT, which undertakes merits review of administrative decisions of the Australian Government, published timeliness targets for the major phases of its review work, in its PBS.

websites. The Tribunals agreed that the specification of time standards in the PBS would strengthen their performance indicators. The Tribunals also considered that the number of complaints could be expressed in terms of complaints per 1000 decisions.

Recommendation No.2

4.21 The ANAO recommends that the Tribunals strengthen their outcomes and outputs frameworks set out in their Portfolio Budget Statements, by:

- articulating the basis on which the Tribunals assess their contribution to the quality and consistency of decision-making concerning migration and temporary entry visas and protection visas and their professional and effective working relationships with stakeholders; and
- specifying appropriate targets or other bases of comparison for quality indicators for measuring the efficiency of Tribunal outputs, in terms of case processing timeliness, complaints and appeals against decisions.

Tribunals’ response

4.22 The Tribunals agree with this recommendation.

Case finalisation and unit cost targets

4.23 The Tribunals have two targets for the output and average cost of case processing and decision-making:

Case finalisation targets	The expected number of cases to be finalised by the Tribunals within a specified period
Unit cost targets	The expected average cost of cases finalised by the Tribunals within a specified period

4.24 Since 2000, Tribunal case finalisation and unit cost targets were specified in funding agreements between the Tribunals and the Department of Finance and Administration (Finance), signed in 2000, 2002 and 2004.

4.25 The ANAO assessed whether these targets had been prepared by the Tribunals, in conjunction with Finance, on a reasonable basis.

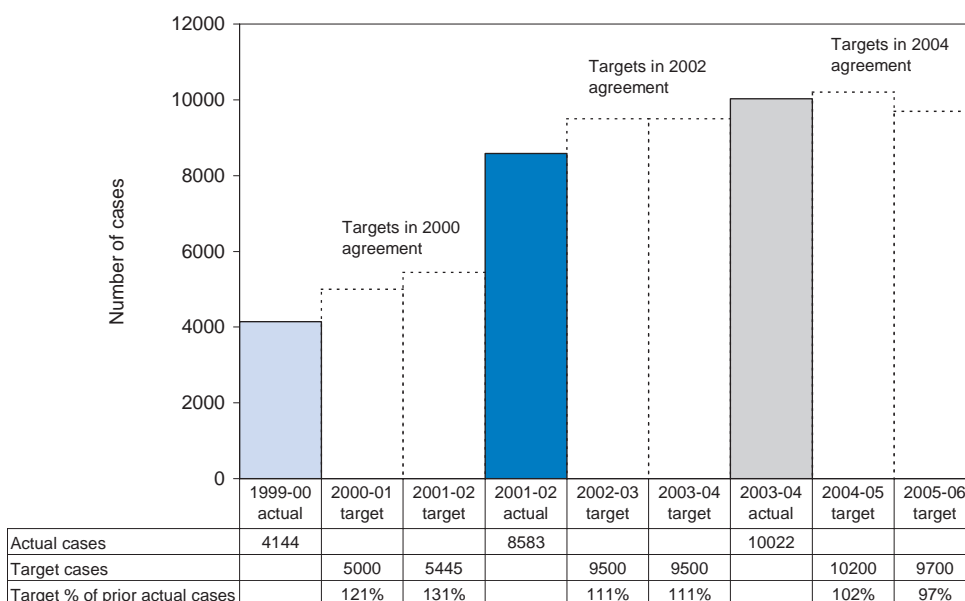
4.26 The ANAO found that the Tribunals’ preparation of case finalisation and unit cost targets for these agreements had appropriate regard to a range of relevant factors which were likely to influence their operational performance. MRT and RRT case finalisation and unit cost targets are examined in turn below. Tribunal performance against these targets is analysed in Chapter 5.

MRT: case finalisation targets

4.27 MRT case finalisation targets for the six years from 2000 onwards aimed to increase finalisations, relative to actual case finalisation performance in the year prior to the signing of each new agreement (see Figure 4.1).

Figure 4.1

MRT: case finalisation targets in funding agreements



Note: The 2004 agreement covers forward years beyond 2005–06. The target for 2006–07 and 2007–08 is 9000 cases (90 per cent of 2003–04 actual cases).

Source: ANAO analysis of MRT agreements and performance information.

4.28 The MRT aimed for a substantial improvement in its case finalisations in the 2000 agreement and a moderate improvement in the 2002 agreement. These stretching targets were part of the Tribunal's strategy to meet its rising caseload and to spread operating costs across a wider base of finalised cases.

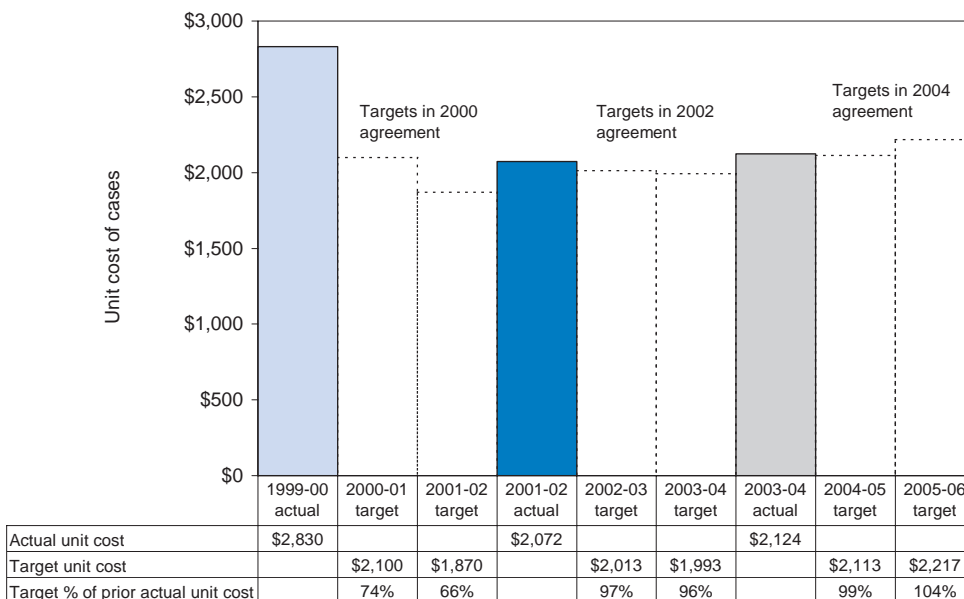
4.29 MRT's 2004 agreement was premised on an overall small deterioration in case finalisation performance over the first two years of the agreement. Its relatively static targets had regard to an expected slowdown in the rate of increase of cases lodged with the Tribunal and were framed within the approved limits of total four-year forward resourcing for the Tribunals.

MRT: unit cost targets

4.30 MRT unit cost targets from 2000 onwards required the Tribunal to reduce and then stabilise unit costs, relative to actual unit cost performance in the year prior to the signing of each new agreement (see Figure 4.2).

Figure 4.2

MRT: unit cost targets in funding agreements



Note: The 2004 agreement covers forward years beyond 2005–06. The target for 2006–07 is \$2371 (112 per cent of 2003–04 unit costs) and for 2007–08 is \$2395 (113 per cent of 2003–04 unit costs).

Source: ANAO analysis of MRT agreements and performance information.

4.31 The 2000 agreement aimed for a substantial reduction in MRT unit costs, while the 2002 agreement aimed for a small reduction in unit costs. The unit cost targets in the 2000 agreement had reflected Finance’s view at that time that the MRT had the capacity to achieve major cost efficiencies.

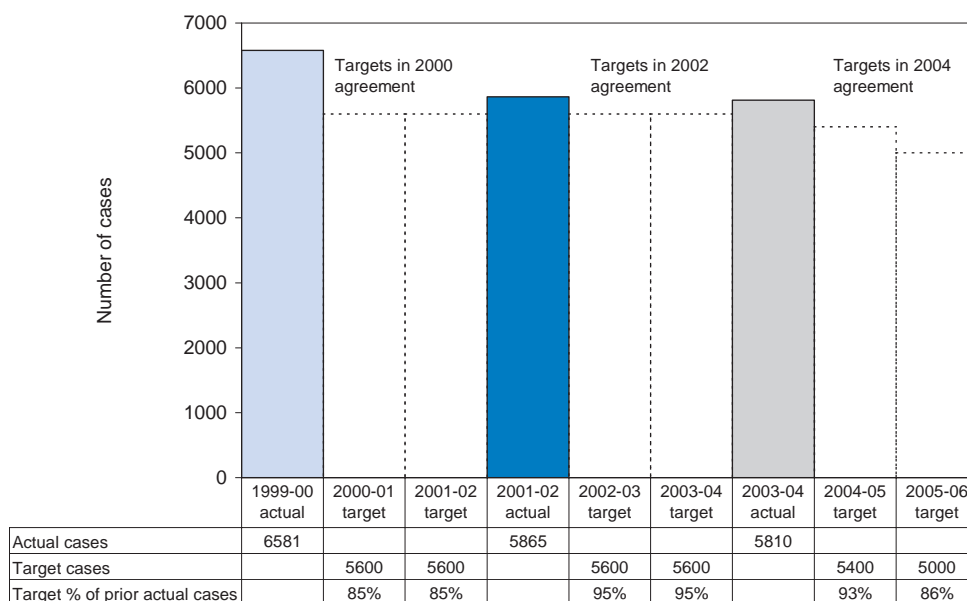
4.32 The MRT expected a small increase in unit costs over the first two years of the 2004 agreement. MRT unit cost targets were set higher to cover the establishment costs of Tribunal initiatives to co-locate Registries, integrate common services, and introduce a joint Case Management System (see Chapter 2).

RRT: case finalisation targets

4.33 RRT case finalisation targets for the six years from 2000 onwards expected finalisations to stabilise below actual case finalisation performance in the year prior to the signing of each new agreement (see Figure 4.3).

Figure 4.3

RRT: case finalisation targets in funding agreements



Note: The 2004 agreement covers forward years beyond 2005–06. The target for 2006–07 and 2007–08 is 4400 cases (76 per cent of 2003–04 actual cases).

Source: ANAO analysis of RRT agreements and performance information.

4.34 The RRT provided for a moderate deterioration in case finalisations in the 2000 agreement and a small deterioration in the 2002 agreement. The 2004 agreement was premised on a further moderate deterioration in case finalisations over the first two years of the agreement.

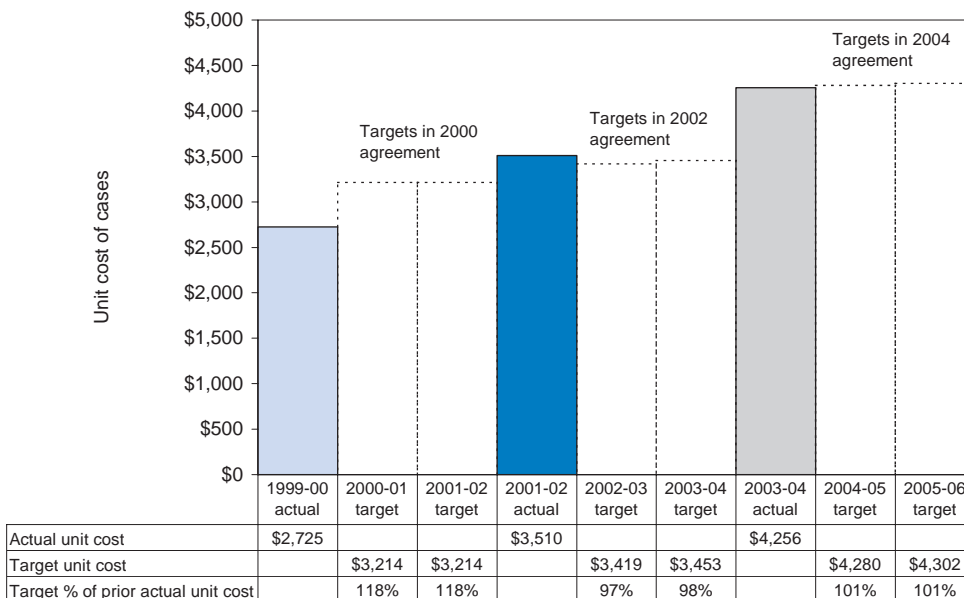
4.35 RRT case finalisation targets were set at lower levels over this period because of the Tribunal's assessment that cases were becoming increasingly complex, and required additional work to ensure that decisions would withstand possible judicial review. The potential for volatility in the future caseload of the Tribunal was also a significant factor in setting lower finalisation targets in the 2002 and 2004 agreements.

RRT: unit cost targets

4.36 RRT unit cost targets from 2000 onwards allowed the Tribunal to increase and then stabilise unit costs, relative to actual unit cost performance in the year prior to the signing of each new agreement (see Figure 4.4).

Figure 4.4

RRT: unit cost targets in funding agreements



Note: The 2004 agreement covers forward years beyond 2005–06. The target for 2006–07 is \$4 554 (107 per cent of 2003–04 unit costs) and for 2007–08 is \$4 600 (108 per cent of 2003–04 unit costs).

Source: ANAO analysis of RRT agreements and performance information.

4.37 The 2000 agreement provided for a moderate increase in RRT unit costs, while the 2002 agreement required a small reduction in unit costs. The 2004 agreement expected unit costs to remain static. RRT unit cost targets were set at higher levels over this six-year period, to reflect the increasing complexity of protection visa casework and the emphasis on procedural fairness and the application of correct law to each case.

4.38 The Tribunals indicated that RRT unit cost targets for the period prior to 2004–05 understated expected unit costs for case finalisations. This was because RRT appropriations for several years were settled on the basis that the RRT would have operating losses and run down accumulated reserves.

Case priorities and time targets

4.39 To assist with the allocation, management and monitoring of caseload, the Tribunals had operational policies which identified:

Case priorities	Special kinds of cases to be given priority in case processing, outside of their date order of lodgement
Time targets	Timeframes for finalisation of types and categories of cases, which were specified as indicators of timely review

4.40 These operational policies were set out in 2004 and 2005 caseload and case allocation policies which were issued by the Tribunals in 2004–05.¹⁹

4.41 The ANAO assessed whether the Tribunals had:

- clearly identified the special kinds of cases for priority processing; and
- developed time targets for the processing of specific types and categories of cases; and regularly reviewed those targets.

MRT: caseload priorities

4.42 The ANAO found that MRT operational policies clearly identified priority categories for MRT caseload and the kind of cases which fell into each priority category. Table 4.3 lists priorities in the 2004 MRT operational policy.

4.43 The main changes made to case priorities in the 2005 MRT operational policy were to condense priorities into three categories; to raise cases involving special circumstances and court remittals to the highest priority category; and to give cases over three months old some priority over other cases.

4.44 MRT operational policies articulated factors that had been taken into account in the specification of MRT case priorities. These included statutory requirements to give priority to certain matters and the particular circumstances of individual cases. The ANAO confirmed that matters that the MRT was required by law to determine within a prescribed period, or otherwise to expedite, were accorded highest priority in these policies.

¹⁹ The issuance of Tribunal caseload and case allocation policies was discussed in paragraph 3.68 and Table 3.11 of Chapter 3.

Table 4.3**MRT case priorities, 2004–05**

Priority	Cases in each priority category
1	<p>Cases to which the MRT was required to give priority by law. These included:</p> <ul style="list-style-type: none"> • cases involving persons being held in immigration detention; • all visa cancellation cases; and • cases involving visitor visas applied for to attend a significant family event.
2	<ul style="list-style-type: none"> • Cases with special circumstances of a compelling or compassionate nature. • Cases remitted from a court for MRT reconsideration. • Cases remitted to DIMA and then rejected by DIMA on a different criterion.
3	<ul style="list-style-type: none"> • Temporary visa cases where the visa applicant was in Australia and the period sought for the visa would otherwise expire before the MRT completed its review. • Cases able to be finalised quickly with minimal impact on delays experienced by other applicants. • Cases identified for processing through a task force or targeted approach.
4	All other cases.

Source: ANAO review of Tribunal papers.

RRT: caseload priorities

4.45 RRT operational policies identified a range of cases that had priority over other cases. Table 4.4 lists cases that were given priority in the 2004 RRT operational policy. The main change in the 2005 RRT operational policy was the inclusion of cases involving identified torture or trauma.

Table 4.4**RRT case priorities, 2004–05**

Cases included in the priority category
<ul style="list-style-type: none"> • Cases involving persons being held in detention. • Cases remitted from a court. • Cases involving financial hardship. • Cases involving minors and residual family applicants. • Cases involving requests to expedite reviews on humanitarian grounds.

Source: ANAO review of Tribunal papers.

4.46 Unlike MRT operational policies, RRT operational policies did not provide for multiple priority categories, even though the 2005 operational policy indicated that the RRT was required to complete detention cases within a tighter time frame than other priority cases. The specification of multiple priority categories for RRT caseload could have been used to make this clearer.

MRT/RRT: joint caseload priorities

4.47 The Tribunals issued a new joint operational policy on caseload and case allocation in July 2006. This provided for two priority categories only, with all RRT cases included in the highest priority category (see Table 4.5).

4.48 This change simplified the administration of case priorities. However, a possible effect of the change was to reduce the relative priority of MRT cases involving special circumstances, which were previously in a separate priority category higher than some other MRT priority cases. Another effect of the change was to eliminate any case prioritisation within the RRT caseload. The new operational policy did not explain the rationale for the changed system.

Table 4.5

Joint Tribunal caseload priorities, 2006

Priority	Cases included in the priority category
1	<ul style="list-style-type: none"> • Cases to which the Tribunal was required to give priority by law. These included: cases involving persons being held in immigration detention; all protection visa cases; all visa cancellation cases; and cases involving visits to attend significant family events. • Cases where the Principal Member decides the case should be given priority because of special circumstances, including: where there would be a continuing separation of a child from a parent; cases where domestic violence has occurred; and cases involving applicants experiencing severe financial hardship. • Cases remitted or returned for a court for the Tribunal to reconsider. • Cases which have been remitted to DIMA and which have again been refused, resulting in the applicant making a further application for review. • Cases identified by the Principal Member for processing through a task force or targeted approach (for example, a series of cases involving similar issues).
2	All other cases, in order of the date of lodgement of the application for review.

Source: ANAO review of Tribunal papers.

4.49 The Tribunals advised the ANAO that the reduction of caseload priorities to two priority levels was based on an assessment that the Tribunals have the capacity to allocate all Priority 1 cases to Members as soon as they were ready for allocation. At the end of February 2007, all Priority 1 level cases accounted for less than 30 per cent of total cases allocated to Members.

4.50 The Tribunals also advised that, while all RRT cases are Priority 1 level cases, the Tribunals have special arrangements for expediting MRT and RRT cases involving persons being held in immigration detention in particular. These were set out in a further operational policy which was issued in January 2007. This direction encourages Tribunal Members and staff to take all reasonable steps to finalise detention cases at the earliest possible time.²⁰

MRT: time targets for specified types of cases

4.51 As well as identifying cases to be given processing priority, the Tribunals had time targets for the processing of MRT and RRT cases. The ANAO examined time targets applying in 2004–05 and subsequent changes.

4.52 The time targets of the two Tribunals in 2004–05 did not cover the same range of processing work. Only the MRT time targets covered the entire period of case processing, from lodgement to finalisation. Neither of the Tribunals' time targets covered the time period from finalisation to the handing down of the decision. It would have been useful for the Tribunals to include this in their reporting on the timeliness of reviews in, for example, their Annual Reports.

4.53 The Tribunals commented that the inclusion of additional information on the average time from time of case decision to the handing down or dispatch of the decision would enhance future reporting on processing times.

4.54 The MRT had four sets of time targets for its caseload in 2004–05. They covered the overall period from lodgement to finalisation, and separately reported the intermediate processing phase of allocation to a Member until finalisation. Figure 4.5 shows these targets and the four types of cases to which they applied. Supporting Tribunal documentation provided a clear classification of visa sub-classes or visa-related decisions into these case types.

²⁰ Principal Member Direction 1/2007 dated 31 January 2007 notes that the Tribunals give the highest priority (Priority 1) to cases involving a person being held in immigration detention. Arrangements for expediting review of detention cases include initiation of these cases in the Tribunals' case management system on the same working day of their receipt; and provision of greater administrative assistance by Registry staff to Members to facilitate case finalisation. Shorter time periods are prescribed in Migration legislation for the Tribunals to process and decide detention cases.

4.55 However, these time targets were not adequately promulgated to Tribunal Members in 2004–05, in that they were not described in 2004 and 2005 MRT operational policies. They were set out in MRT caseload reports.

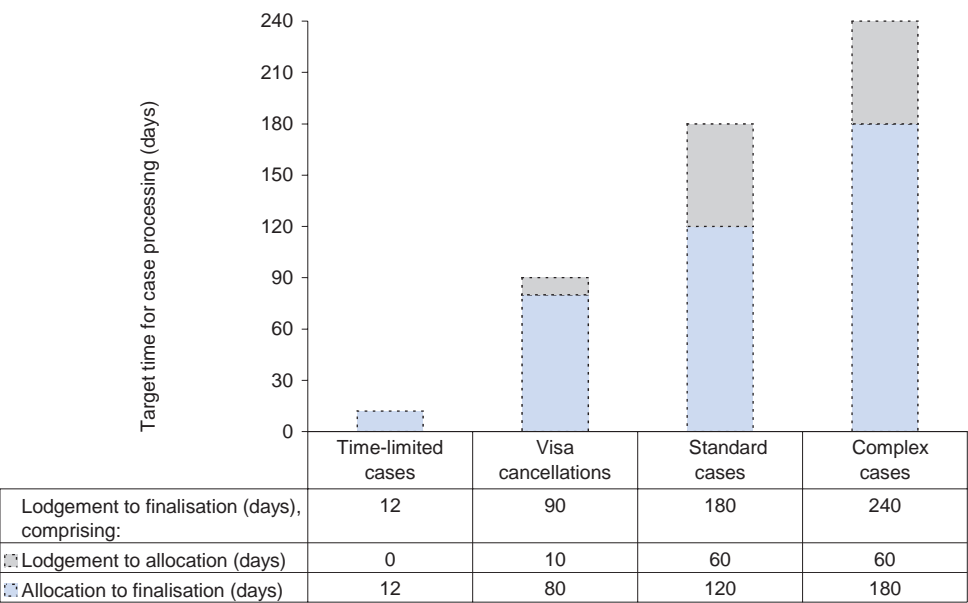
4.56 *Prima facie*, the time targets for the four case types provided a reasonable framework for the measurement of the timeliness of MRT case processing. Having shorter-times for the first two case types was consistent with the MRT's statutory obligations to finalise time-limited cases within seven working days (or an agreed extended period), and to give priority to visa cancellation cases. The longer time allowed for complex cases also recognised that they generally involved more time-consuming and demanding casework.

4.57 However, the basis for the time targets being set at levels shown in Figure 4.5 was not presented in Tribunal operational policies. Similar time targets had existed for at least five years. The regular review of these targets would help ensure their continuing appropriateness. Articulation of the rationale for specific target settings is also likely to increase Member and staff confidence in, and commitment to the achievement of, the targets.

4.58 While there have been improvements in case finalisation times in recent years, the time targets (other than for time-limited cases) in 2004–05 were largely aspirational and unlikely to be achieved for some time. As noted in Chapter 5, just 21 per cent of MRT visa cancellations and 34 per cent of MRT standard cases were processed within relevant time targets between July 2004 and May 2005. Because unrealistic targets can be counterproductive to efforts directed at performance improvement, there would be merit in the MRT setting more achievable, interim time targets, at least for the short-term.

Figure 4.5

MRT time targets for case processing, 2004–05



Note: The four case types covered the following case categories:

Time-limited cases	Bridging visa cancellations or refusals in respect of persons in immigration detention.
Visa cancellations	Visa cancellations, other than time-limited cases.
Standard visa refusals and other standard cases	Visa refusals for bridging; visitor; student; and temporary business case categories. Other standard cases.
Complex visa refusals and other complex cases	Visa refusals for permanent business, skill linked, partner, family and temporary business sponsorship case categories. Other complex cases.

Source: ANAO analysis of Tribunal papers.

4.59 The MRT improved its promulgation to Tribunal Members of time targets for case processing in 2005–06, by specifying a new set of five case processing time targets in an operational policy on the efficient conduct of MRT reviews, issued in October 2005. This included new time targets of 200 days for complex cases and 240 days for more complex cases. This operational policy is now publicly available, on the Tribunal website.

4.60 Notwithstanding these improvements, the new MRT operational policy did not define each case type, nor explain the rationale for the changes. Time targets for the intermediate processing phase of allocation to a Member until

finalisation were also not specified. Appropriate specification of full details of MRT time targets in future operational policies is important, as it provides the authoritative basis for requiring Members to comply with targets.

4.61 The Tribunals advised the ANAO that the MRT time standards in their operational policy on the efficient conduct of MRT reviews reflect processing times which are achievable, based on past and current processing times from allocation of cases to decision. As the backlog of MRT cases is reduced, the delay between the lodgement of applications and allocation to Members is expected to reduce to a matter of weeks.

4.62 The ANAO considers that MRT time targets need to be set at realistic levels, and be based on the *entire period of case processing*. Time targets which do not have appropriate regard to the current reality of MRT case backlogs and processing delays from the time of lodgement of review applications until case allocation of Members are of little benefit to the MRT in its pursuit of improved performance. Moreover, the publicising of MRT time targets which are not currently achievable is likely to generate client expectations of Tribunal service performance which will not generally be met.

RRT: time targets for specified types of cases

4.63 The RRT had two time targets for case processing in 2004–05; one for detention cases and the other for community cases (see Figure 4.6). They were described in RRT 2004 and 2005 operational policies and RRT caseload reports.

4.64 As noted above, the RRT time targets in 2004–05 did not cover the entire period of case processing, from lodgement to finalisation. This was because the RRT metric excluded the initial processing time from lodgement until allocation to Members. If there are backlogs, cases can await allocation for extended periods of time. For example, 56 per cent of the total caseload on hand at the RRT at end May 2005 was yet to be allocated to Members, and had been awaiting allocation action for an average of 48 days. Such processing delays were not covered in RRT external reporting against their time targets.

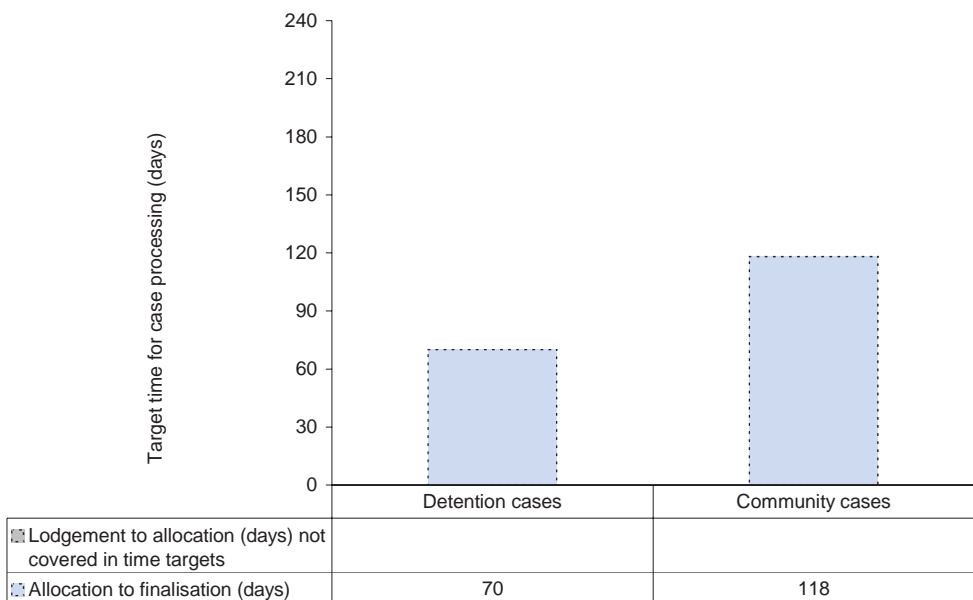
4.65 The RRT time targets for case processing in force in 2004–05 had been used since 1998. The original basis of these targets, and their continuing appropriateness, were not addressed in 2004 and 2005 RRT operational policies. It would have been desirable for the RRT to carry out an annual review of the time targets, as they were key performance measures.

4.66 RRT operational policies issued in 2005–06 replaced the two existing time targets with a single time target of 90 days for RRT caseload, aligned to the statutory requirement for the Tribunal to decide all protection visa cases within 90 calendar days of receipt of relevant documentation from DIMA.

4.67 Accordingly, the RRT’s time target in 2005–06 did not cover the time from lodgement to receipt of DIMA’s documents. However, the Tribunals did separately report in their joint 2005–06 Annual Report the average additional time for receipt of DIMA’s documents after lodgement of review applications.

Figure 4.6

RRT time targets for case processing, 2004–05



Note: The case categories covered the following cases:

Detention cases	Cases involving applicants in immigration detention.
Community cases	Cases other than those involving applicants in immigration detention.

Source: ANAO analysis of Tribunal papers.

4.68 The introduction of an additional time target which covers the RRT’s timeliness performance from lodgement to finalisation could have some benefits for the Tribunals. It would provide a common metric to measure the overall timeliness performance of the two Tribunals. In addition, this metric would correspond more closely than the RRT’s new time target to applicants’ actual experience of the total processing time for resolution of their cases.

Productivity targets for Tribunal Members

4.69 In addition to timeliness targets for case processing and decision-making, the Tribunals had productivity targets for Members. These focus on:

Member productivity	Cases finalised as a percentage of the target number of finalised cases for the number of casework days worked
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4.70 The productivity targets in force at the time of audit examination had been specified in operational policies on caseload and case allocation, issued by the Principal Member in 2004–05. Since then, the targets for 2005–06 were revised and new targets were set for 2006–07. The requirement for Members to meet these targets was set out in their performance agreement with the Principal Member, which they signed at the time of their appointment.

4.71 Figure 4.7 shows productivity targets for full-time Tribunal Members for the period from 2003–04 onwards. In June 2005, a full-time Member in the Sydney Registry, the larger of the two Registries, was expected to finalise 317 MRT cases, or 120 RRT cases, per annum. This was equivalent to 1.4 MRT cases or 0.5 RRT cases per day, based on working 230 casework days per annum.

4.72 Since 2003–04, the annual productivity targets for both MRT and RRT casework were lowered twice. After a small reduction in targets set for 2004–05, there was a moderate reduction in most of the targets set for 2006–07.

4.73 Between 2003–04 and 2005–06, the productivity targets of both Tribunals were set at lower levels for the Melbourne Registry than for the Sydney Registry. This differential has now been eliminated.

4.74 The ANAO assessed whether the Tribunals had set productivity targets for Members, based on a systematic analysis of factors affecting Tribunal productivity and recent productivity performance of Tribunal Members.

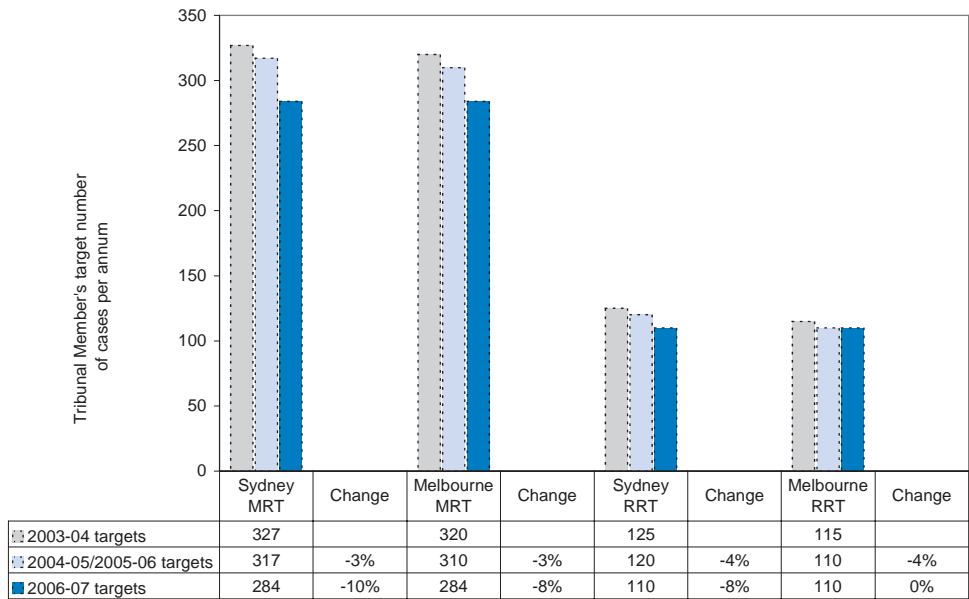
4.75 The ANAO found that operational policies setting out productivity targets, issued in 2004–05, appropriately identified factors that could cause the Tribunals to change their productivity targets for Members. These included changing caseload, the productivity performance of Members, and changes to legislation and work practices. However, as discussed below, these considerations were not adequately addressed in the operational policies.

4.76 The operational policies did not provide a clear assessment of changes in the complexity of the national caseload since targets were previously set, although they did note differences in the current caseload of the Melbourne and Sydney Registries, which supported differential productivity targets for

the Registries. In 2004–05, the Melbourne Registry had a higher proportion of more complex cases, which required greater work effort by Tribunal Members.

Figure 4.7

Productivity targets for full-time Tribunal Members



Note: Tribunal Member productivity targets were based on Members working 230 working days per annum.

Source: ANAO analysis of Tribunal papers.

4.77 Operational policies also did not make any reference to the productivity performance of Tribunal Members for the previous year or prior years. The ANAO considered recent Member productivity to be highly relevant to future productivity target setting for the Tribunals.

4.78 In addition, the implications of the discontinuation of the established work practice of first examination of MRT cases by case officers before their allocation to Members, which was about to be introduced in mid-2005, were not canvassed. Coverage of the likely impact of this major change on Member productivity could have been expected in the MRT operational policy.

4.79 Future operational policies setting out productivity targets would be enhanced by the inclusion of more analysis of trends in the Tribunals’ case mix and of Members’ performance against previous targets, both to support Tribunal decisions to retain or revise the targets and to provide reasonable assurance to Members that productivity targets are realistic and achievable.

4.80 The Tribunals advised the ANAO that past and current performance of Members, the balance between quality, timeliness and productivity, changes in the composition of Tribunal caseload, changes in work practices, and changes in legislation and case law are matters that are extensively discussed at Senior Management Group and Joint Management Board meetings in settling productivity targets. Draft policies are circulated to Members for comment and the policies and the impact of the changes mentioned above are discussed at Members' meetings.

4.81 The ANAO acknowledges that productivity targets for Members are the subject of considerable Tribunal management deliberation and consultation with Tribunal Members. The inclusion of additional productivity and caseload analysis in draft and final operational policies on Member productivity targets would strengthen those processes and underpin final decisions on targets.

Conclusion

4.82 The Tribunals had an adequate set of performance indicators for measuring their case processing and decision-making performance. The indicators were published in their PBS, set out in their funding agreement with Finance, specified in operational policies or contained in management reports.

4.83 These performance indicators provided coverage of the main aspects of the Tribunals' operational performance. These aspects included: the cost of operations; the volume of case finalisations; unit cost targets; case processing priorities; and the timeliness of case processing. The productivity of Members; the level and outcome of judicial reviews; and the level of complaints from review applicants and their representatives were also covered.

4.84 Consistent with sound business practice, targets were set for a number of these performance indicators, including the cost of operations; case finalisations; unit costs; processing times; and Members' productivity. However, there was scope to set targets or other bases for comparison for other performance indicators, such as complaints and appeals against decisions. Additional targets would provide the Tribunals with a clearer basis for assessing their business performance and the quality of services provided to applicants.

4.85 Most targets were reviewed on at least an annual basis. However, time targets for MRT cases had not been reviewed for at least five years. Most MRT time targets were also set at unrealistic levels, and there would be merit in the MRT setting more achievable, interim time targets, for at least the short-term.

4.86 Targets for case finalisations and unit costs had been prepared by the Tribunals, having regard to factors such as trends in case lodgements; the increasing complexity of caseload; and the establishment costs of major Tribunal initiatives. However, there was not adequate analysis of trends in the complexity of national caseload and Member productivity performance, in operational policies setting out productivity targets for the Tribunals.

4.87 At a strategic level, the Tribunals' outcomes and outputs frameworks which were set out in their PBS required strengthening. The Tribunals' current effectiveness indicator for measuring their contribution to outcomes was not clearly defined, and sufficiently comprehensive performance indicators by which their contribution could be measured had not been identified. The Tribunal set aside rate of DIAC/DIMA decisions could be used as one effectiveness indicator, additional to the outcome of judicial review of Tribunal decisions, for assessing the Tribunals' contribution to correct and preferable visa-related decisions. In addition, targets or other bases for comparison for all quality indicators for the Tribunals' outputs should be published in their PBS to reinforce the commitment of the Tribunals to improved service delivery and to assist PBS users to assess the Tribunals' actual operational performance.

5. Reporting on Performance

This Chapter examines the Tribunals' quality of reporting on case processing and decision-making, and the extent of achievement of desired performance results.

Performance reporting

5.1 Performance information is used by agencies for both external and internal reporting. External reports, particularly Annual Reports, focus on the achievement of outcomes and outputs. Internal reports include information which supports management monitoring of operations and decision-making.

5.2 This Chapter examines Tribunal performance reporting in their:

- 2003–04 and 2004–05 Annual Reports; and
- regular internal reports to senior management in 2004–05.

5.3 This Chapter also examines the Tribunals' performance between 2001–02 to 2004–05 in terms of key performance indicators, particularly:

- Case finalisation and unit costs.
- Timeliness of case processing and decision-making.
- Productivity of Tribunal Members.

External reporting and accountability

5.4 The MRT's and the RRT's 2003–04 and 2004–05 Annual Reports were transmitted by the Principal Member to the Minister for Immigration and Multicultural and Indigenous Affairs in October 2004 and 2005 respectively.²¹

5.5 Each Annual Report included a performance report, which outlined the Tribunal's outcome and output statements presented in its PBS entry for that year. Each Annual Report also provided a range of performance information on Tribunal operations, including some information in relation to the performance indicators in their outcome and output frameworks.

²¹ These Annual Reports covered the main period of focus of the audit. Since the publication of these Annual Reports, the MRT and the RRT transmitted a joint Annual Report on their operations for 2005–06 to the Minister for Immigration and Multicultural Affairs, in September 2006.

5.6 The Tribunals’ Annual Reports also contained reports of the Principal Member. These provided an overall assessment of Tribunal achievements and progress on initiatives during the year, significant matters that had affected Tribunal operations and expected developments for the following year.²²

5.7 The Tribunals advised the ANAO that their Annual Reports have been prepared in accordance with *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*. They also commented that they have received positive feedback on their Annual Reports and have been responsive to views expressed by stakeholders, parliamentary committees and others on the content of Annual Reports.²³

Annual Reporting on outcomes

5.8 The desired outcomes of the Tribunals in 2004–05 were:

MRT outcome	To contribute to ensuring that the administrative decisions of government are correct and preferable in relation to non-humanitarian entrants.
RRT outcome	To contribute to ensuring that Australia meets its obligations pursuant to the Convention relating to the status of refugees.

5.9 The ANAO assessed whether the Tribunals’ Annual Reports provided an assessment of the impacts of their outputs on outcomes and the impacts of their contributions to outcomes, relative to other agencies, particularly DIMA.

5.10 The ANAO found that the Tribunals’ Annual Reports did not expressly report on the impacts of their outputs-the independent merits review of visa-related decisions-on the desired outcomes. Nor did these reports provide an assessment of the Tribunals’ contributions to the desired outcomes.

5.11 Moreover, the Tribunals’ Annual Reports did not especially highlight performance in terms of their stated effectiveness indicator, the ‘outcome of applications for judicial review’. As noted in Table 4.2 in Chapter 4, the Tribunals had specified this indicator in their 2004–05 PBS, to measure the impacts of their outputs on desired outcomes. Notwithstanding this intention, the effectiveness indicator was reported as part of the general coverage of performance information, including judicial reviews, in the Annual Reports.

²² The Tribunals’ joint 2005–06 Annual Report also included a Registrar’s Report for the first time.

²³ The Tribunals also noted that the 2001–02 MRT Annual Report was awarded a commendation in the small agency category by the Institute of Public Administration Australia.

5.12 The ANAO considered the Tribunals' lack of clear assessment of the impact of their outputs on outcomes and their contributions to outcomes to be a significant accountability gap. Because such assessments are an essential part of performance reporting requirements, it would be appropriate for the Tribunals to give increased attention to reporting on the impacts of their outputs and their contributions to outcomes in future Annual Reports.

Annual Reporting on outputs

5.13 The identified outputs of the Tribunals in 2004–05 were:

MRT output	Independent merits review of certain decisions concerning applicants for non-humanitarian entry and stay.
RRT output	Independent merits review of decisions concerning applicants for refugee status.

5.14 The ANAO assessed whether the Tribunals' Annual Reports reported performance information on Tribunal outputs, in terms of targets and/or other appropriate bases of comparison, and, where appropriate, provided analysis of factors affecting performance results. In addition, the ANAO reviewed the Tribunals' use of charts and tables to illustrate performance results and trends, their consistency in reporting on performance in successive Annual Reports, and their explanation of any reporting change in their Annual Reports.

5.15 The Tribunals' Annual Reports presented performance results for the current year and performance trends over recent years, as well as some analysis of factors affecting performance results. Summary reporting of caseload statistics and coverage of management initiatives were strengthened in the 2004–05 Annual Reports. The Tribunals' Annual Reports made extensive use of charts and tables, to present performance information. Consistency in data reporting was generally maintained from year to year.

5.16 The Tribunals' Annual Reports included some coverage of the volume of case finalisations; the timeliness of case finalisations; the level and outcome of judicial reviews; and the level of complaints received. In addition, extensive supplementary performance information was provided in the Annual Reports. This included statistics on case lodgements and active caseload; case processing times; Member productivity; and the set aside of DIMA decisions.

5.17 Table 5.1 analyses in more detail the Tribunals' reporting of performance results in their 2004–05 Annual Reports, particularly in terms of the performance indicators which had been specified in their PBS.²⁴

Table 5.1

External reporting of key aspects of Tribunal performance, 2004–05

Reported performance	ANAO comment
Case finalisations and other aspects of caseload	
<p><u>Range of performance information</u></p> <p>The Tribunals reported data on their case finalisations.</p> <p>Data on case lodgements and cases on hand were also reported in detail in the Annual Reports.</p>	<p>Case lodgements, cases on hand and case finalisations were appropriately reported in their logical case processing sequence.</p> <p>However, case finalisation performance results were not given prominence, relative to case lodgements and cases on hand, in the Annual Reports. Case finalisations had been identified as the Tribunals' quantity output indicators, in their PBS.</p> <p>A stronger focus on case finalisations in future Annual Reports would enhance the quality of the Tribunals' reporting against outcomes and outputs frameworks.</p>
<p><u>Basis of performance comparison</u></p> <p>Data on case finalisations were reported for 2004–05 and the two previous years.</p>	<p>Reporting of case finalisations for the current year and the two previous years was useful in providing a basis of comparison for Tribunal performance.</p> <p>Case finalisation performance was not reported in terms of their PBS targets. The Tribunals did not disclose that they did not meet PBS targets for case finalisations for 2004–05.</p> <p>Reporting of case finalisations against PBS targets would improve the Tribunals' accountability for results.</p>
<p><u>Performance analysis</u></p> <p>The Tribunals identified reasons for their reduction in case finalisations in 2004–05.</p>	<p>The Tribunals' analysis of factors affecting case finalisation performance results could have been more robust. Both Tribunals provided similar reasons for the reduction in their case finalisations, despite significant differences in their respective caseload situations.²⁵</p> <p>Analysis of case finalisation performance would be strengthened by closer examination of particular factors affecting the performance of each Tribunal.</p>
<p><u>Performance assessment</u></p> <p>The Tribunals did not state whether their case finalisation performance was considered to be satisfactory or not.</p>	<p>Inclusion of an overall Tribunal assessment of their case finalisation performance would assist report users to interpret reported performance results.</p> <p>This ANAO comment also applies to other areas of Tribunals' reported performance addressed in this Table.</p>

²⁴ Details of these performance indicators are set out in Table 4.2.

²⁵ In particular, the MRT Annual Report stated that the decline in lodgements was one of two reasons for the 17 per cent reduction in MRT case finalisations. However, lodgements had fallen by 1 per cent only.

Timeliness of case processing and decision-making against targets and other indicators	
<p><u>Types of performance indicators</u></p> <p>The Tribunals reported data on the timeliness of cases using three types of indicators:</p> <ul style="list-style-type: none"> the timeliness of case finalisations against time targets; the age of cases on hand; and the average time taken to process cases. 	<p>One of the Tribunals' PBS quality indicators was <i>the extent to which time standards were met</i>. Only the first of the three timeliness indicators of the Tribunals measured case timeliness performance against any target or standard.</p> <p>The other two timeliness indicators reported on the timeliness of Tribunal case processing for the current year, relative to the two previous years. This provided useful supplementary performance information, which should be retained.</p> <p>Setting targets for these two timeliness indicators would enable the Tribunals to use the indicators to report on case timeliness in accordance with their PBS.</p>
<p><u>Extent of reporting against targets</u></p> <p>The Tribunals reported data on the timeliness of case finalisations against time targets for only one MRT case category. Data was not reported for any RRT category.</p>	<p>The Tribunals did not report data on the timeliness of case finalisations against their full set of timeliness targets in their Annual Reports. The full set of targets was used by the Tribunals for management reporting only.</p> <p>Reporting of case timeliness performance in terms of the Tribunals' full set of time targets would improve their accountability for results.</p>
<p><u>Performance analysis</u></p> <p>The Tribunals identified general factors that <u>could</u> affect the timeliness of MRT reviews, but did not do this for RRT reviews.</p>	<p>The Tribunals did not present any analysis of factors that had <u>actually</u> contributed to the times taken to process MRT and RRT cases. The Tribunals' presentation of such analysis in their Annual Reports would better inform reports users of the major reasons for the times taken to finalise cases.</p>
Complaints received	
<p><u>Precision of reporting</u></p> <p>The Tribunals indicated that a small number of complaints were received in 2004–05.</p> <p>The actual number of Tribunal responses to investigated complaints was reported.</p>	<p>The Tribunals did not report on the precise number of complaints received. This was one of the Tribunals' stated PBS quality indicators for 2004–05.</p> <p>Reporting of the number of complaints received would provide report users with information which was specified in the Tribunals' outcomes and outputs framework.</p>
<p><u>Basis of performance comparison</u></p> <p>The number of complaints received in previous years was not reported.</p>	<p>Reporting of data on complaints received in the previous two years would provide report users with an appropriate basis for performance comparison.</p>

Level and outcome of judicial reviews

<p><u>Basis of performance comparison</u></p> <p>The Tribunals reported data on judicial review applications for 2004–05 and the previous year, and the outcome of judicial reviews for 2004–05 and the previous two years.</p>	<p>Comparative data on judicial review applications for just the previous year were included in the Annual Reports.</p> <p>The Tribunals' adoption of a three-year timeframe of current year and the previous two years for reporting data against all performance indicators would provide the Tribunals with a consistent, standard basis for performance comparison.²⁶</p>
<p><u>Performance analysis</u></p> <p>The Tribunals did not identify reasons for the increased rate of remittals of judicial reviews for Tribunal reconsideration since 2002–03, in their Annual Reports.²⁷</p>	<p>Analysis and reporting of factors contributing to the reduction in the proportion of Tribunal decisions being upheld by the courts would better inform report users about the Tribunals' performance. The outcome of judicial reviews was identified in the Tribunals' PBS for 2004–05 as their key effectiveness indicator of the contribution of their outputs to outcomes.</p>

Source: ANAO analysis of Tribunal Annual Reports.

5.18 The ANAO analysis of the Tribunals' external reporting on case processing performance (set out in Table 5.1) indicated that the existing PBS targets were not being used for their intended purpose of reporting on performance. There would also be benefit in the Tribunals identifying additional targets or bases of comparison in their PBS entries and reporting against them, particularly in relation to the timeliness of case processing.

5.19 Greater analysis and reporting of factors affecting performance results would better inform report users about the Tribunals' performance. This could include reporting of changes in the complexity of their casework, such as the proportion of cases involving hearings, which extend case processing times. It would also assist report users if the Tribunals stated clearly in their Annual Reports whether performance achieved in the current year against PBS targets was considered to be satisfactory. The improvements outlined above would result in increased transparency and accountability of the Tribunals for their performance results.

5.20 The Tribunals advised that they welcomed ANAO comments on their Annual Reporting and would use them to further improve external reporting.

²⁶ The Tribunals' subsequent 2005–06 Annual Report reported judicial review applications in terms of a three-year timeframe. It would be appropriate to continue this arrangement.

²⁷ Remittals rose from 10 per cent to 17 per cent of MRT judicial review decisions between 2002–03 and 2004–05. Remittals rose from 8 per cent to 11 per cent of RRT judicial review decisions over that period.

5.21 The Tribunals commented that their performance reporting across the PBS indicators could be strengthened by the inclusion of a table or section in the Annual Report which summarises performance against each indicator.

5.22 The Tribunals advised that, through their first combined Annual Report in 2005–06, and in future years, the Tribunals aim to strengthen both the detail and consistency in reporting across the operations of the two Tribunals.

5.23 The Tribunals noted that their 2005–06 Annual Report included discussion of the impact of the introduction of the 90 day time standard for RRT cases on MRT case finalisations, and the expected productivity impact of the implementation of the Tribunals' new case management system (CaseMate) and changed work practices. Future Annual Reports are expected to include analysis of factors contributing to Tribunal cases being finalised outside of time standards, using data from the CaseMate system.

Recommendation No.3

5.24 The ANAO recommends that the Tribunals strengthen external reporting through their Annual Reports by:

- addressing the impact of their outputs and their contribution to outcomes; and
- including clear assessments of output performance, reporting performance results against PBS targets; and providing more comprehensive analysis of factors affecting performance.

Tribunals' response

5.25 The Tribunals agree with this recommendation.

Management reporting

5.26 As well as having appropriate performance information to meet external accountability requirements, it is important that the Tribunals have a structured and regular system of internal, management reporting on performance, which supports the effective management of their operations.

5.27 In 2004–05, the Tribunals produced a suite of management reports for senior management on a monthly basis (described in Table 5.2).

Table 5.2

Main Tribunal management reports on Tribunal operations, 2005

Report title	Description	Management Group
MRT/RRT caseload summary report	A one-page statistical summary on the caseload performance of both Tribunals.	SMG
MRT and RRT caseload reports	Two separate, more detailed narrative and statistical reports on MRT caseload (4 pages) and RRT caseload (2 pages).	SMG
MRT and RRT Member case finalisation reports	Two separate statistical reports on Member case finalisations and productivity.	SMG
District Registry performance reports	Separate narrative reports incorporating statistics covering the MRT and RRT caseload and other areas of performance of the Sydney and Melbourne Registries.	SMG
Principal Registry corporate function performance reports	Separate narrative reports incorporating statistics on each specific Principal Registry corporate function.	SMG
MRT and RRT financial reports	Two narrative and statistical reports of a similar format, including summary data on case finalisations and operating expenses.	JMB

Source: ANAO review of Tribunal JMB and SMG papers, 2005.

5.28 Five of the six abovementioned types of management reports (excluding the reports on corporate functions) were identified by the ANAO as being of most relevance to the focus of this audit. The ANAO assessed whether the selected management reports:

- were produced in a structured format at appropriate, regular intervals;
- covered key areas and aspects of Tribunal performance; and
- reported on performance against agreed targets or reference points.

5.29 The ANAO found that the Tribunals consistently produced each type of management report in accordance with its particular established format, thereby assisting report users to more readily use the information provided. Each management report was also produced at a regular interval, in time for the monthly meeting of the relevant SMG or JMB, which listed the reports for discussion. The ANAO considered that this monthly frequency of reporting was appropriate to the performance information needs of the Tribunals.

5.30 The management reports of the Tribunals provided coverage of most relevant areas and aspects of Tribunal performance, particularly case processing volumes, case outcomes, and processing timeliness. However, some important matters, such as judicial reviews of Tribunal case decisions; complaints; and the unit cost of case finalisations, were not addressed in the management reports examined (see Table 5.3).²⁸ As noted earlier in this Chapter, there was also inadequate external reporting of these matters.

²⁸ Performance information on judicial review applications and outcomes was not included in the five types of management reports examined by the ANAO. However, this information was regularly reported in one of the Tribunals' corporate function performance reports that related to legal services.

Table 5.3**Management reporting of key aspects of Tribunal performance, 2005**

Performance information	Report coverage	Use of targets/forecasts as the basis for reporting on performance. If targets/forecasts are not used, use of other reference points
Caseload		
Case lodgements	✓	Reference points used.
Cases on hand	✓	Reference points used.
Case finalisations	✓	Targets/forecasts used in one JMB management report. Reference points used in SMG management reports.
Case outcomes		
Case outcomes	✓	Targets considered by the ANAO/Tribunals not to be applicable to reporting this performance information.
Processing timeliness		
Cases on hand	✓	Reference points used for MRT caseload by one Registry. Otherwise reference points not used.
Case finalisations	✓	Targets/forecasts used.
Case prioritisation	Limited ✓ for some case types	Targets or reference points existed, but were not used.
Member performance		
Caseload allocations with Member	Partial ✓ (MRT only)	Targets existed, but were not used.
Age of cases with Member	Partial ✓ (MRT only)	Reference points used.
Case work days	X	
Productivity	✓	Targets/forecasts used.
Costs		
Tribunal expenses	✓	Targets/forecasts used.
Tribunal unit costs	X	
Judicial reviews		
Judicial reviews	X	
Complaints		
Complaints	X	

Legend: ✓: Covered; X: Not covered; Limited ✓: Limited coverage, with processing timeliness reported for two particular sets of priority cases-MRT time-limited and other expedited cases; and RRT detention cases.

Source: ANAO review of Tribunal management reports, 2005.

5.31 The Tribunal management reports presented performance information for some aspects of Tribunal performance in terms of targets that had been set by the Tribunals. These aspects included case processing timeliness and Member productivity. However, performance targets set for MRT and RRT case finalisations, which were specified in the Tribunals' funding arrangements with the Department of Finance and in their PBS, were not used for internal management reporting in SMG reports in 2004–05. Internal performance targets for caseload allocation to Tribunal Members also were not used. Good performance reporting practice is to present performance in terms of specified targets (desired outcomes) or forecasts (expected outcomes) whenever practicable, to aid report users in their interpretation of performance results.

5.32 For many aspects of Tribunal performance where targets were not used as a basis for reporting, management reports used other comparative reference points, such as the previous month's performance. However, this was not invariably done in each management report, particularly the MRT/RRT caseload summary report. The systematic use of reference points for all areas of Tribunal performance in management reports would make clearer the direction and rate of performance change between reporting periods.

5.33 Where there were reference points for a particular area of Tribunal performance, individual management reports sometimes used different reference points for reporting on the latest monthly/year to date performance relative to a previous period. In one report, this could be the previous month, while in another report, it could be the year to date figure for that month in the previous year. The specification, and consistent use, of a minimum set of standard timeframe reference points for reporting in all management reports on particular areas of Tribunal performance would make it easier for Tribunal management to interpret performance trends across Tribunal operations.

5.34 The Tribunals did not have an overarching 'balanced scorecard'-type management report which presented a concise overview of all major aspects of their case processing operations. The Tribunals' MRT/RRT caseload summary report, introduced in April 2005, was an innovative step, in providing concise coverage of the case processing performance of both Tribunals in a single management report. However, there would be benefit in extending this summary report to include coverage of other related areas of Tribunal performance, such as case priorities, Member productivity, judicial reviews, and complaints. This would provide Tribunal management with a more balanced and coherent summary of all major aspects of case processing and

would help identify any areas of less satisfactory operational performance which require timely management action.

5.35 The Tribunals noted that there has been regular, structured reporting on caseload to the Senior Management Group (SMG) and the Joint Management Board (JMB) for some years. Since January 2007, information on performance against case finalisation targets and unit costs, which had previously been circulated to the JMB only, has been also been provided to the SMG. Complaints data would be soon included in management reports. The Tribunals consider that developing a performance information framework would assist in identifying and defining key performance information and further standardising internal reporting and comparative reference points.

Recommendation No.4

5.36 The ANAO recommends that the Tribunals enhance internal management reporting, by introducing:

- an overarching ‘balanced scorecard’-type management report which covers their full range of PBS performance indicators; and
- common formats, across both Tribunals and both Registries, for management reports on particular areas of Tribunal performance.

Tribunals’ response

5.37 The Tribunals agree with this recommendation.

Case finalisation and unit cost performance

5.38 The achievement of case finalisation and unit cost targets are crucial aspects of the performance of the Tribunals. The ANAO analysed Tribunal performance against these targets for the period from 2001–02 to 2004–05.

5.39 From 2001–02 to 2004–05, the Tribunals had mixed performance results, in terms of achieving case finalisation and unit cost targets which had been specified in funding agreements with the Department of Finance and Administration (see Chapter 4 for details of the annual targets of the two Tribunals). The actual case finalisations of both Tribunals were above target in the first three years of this four year period. However, the unit costs of cases of both Tribunals were within target in only one of the four years.

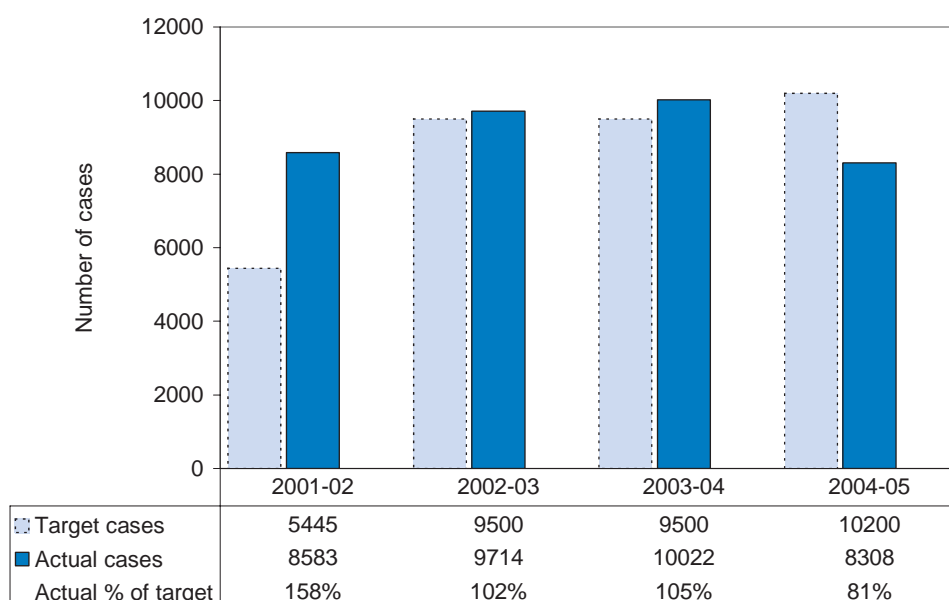
MRT: case finalisation performance

5.40 Figure 5.1 shows MRT case finalisation performance against the relevant funding agreement target for the period from 2001–02 to 2004–05.

5.41 MRT case finalisations were above target in the first three years. Case finalisations markedly exceeded the target in 2001–02 and remained above target in 2002–03 and in 2003–04. This was a creditable result, as stretching targets had been set for 2001–02 and 2002–03. However, MRT case finalisations were substantially below target in 2004–05.

Figure 5.1

MRT: case finalisation performance against targets



Source: ANAO analysis of MRT agreements and performance information.

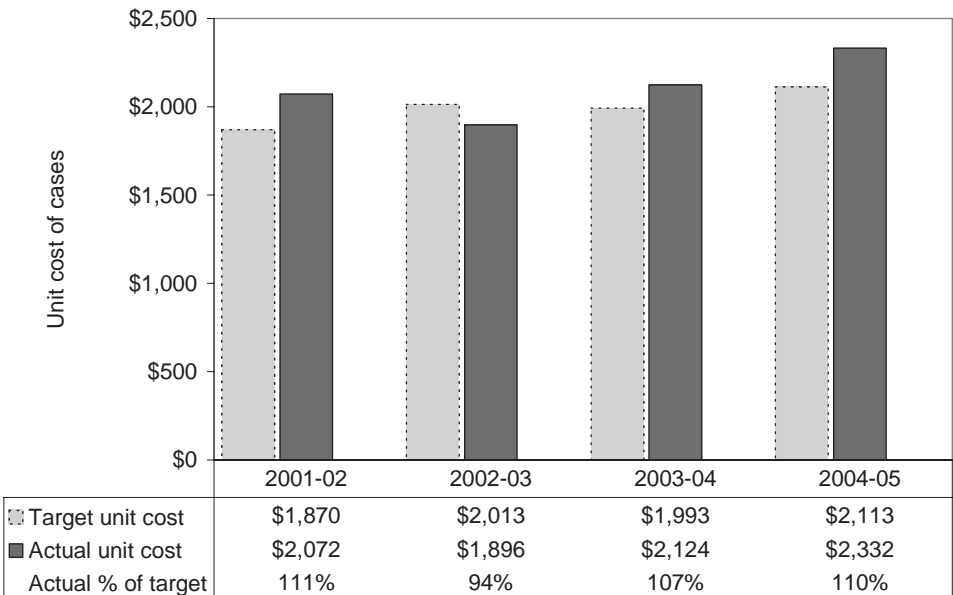
MRT: unit cost performance

5.42 Figure 5.2 shows MRT’s performance against unit cost targets for the period from 2001–02 to 2004–05.

5.43 MRT unit costs were within target in only one of the four years (2002–03). The unit cost of MRT cases was substantially higher than the stretching target which had been set for 2001–02. The MRT’s unit cost was also substantially higher than the static target for 2004–05.

Figure 5.2

MRT: unit cost performance against targets



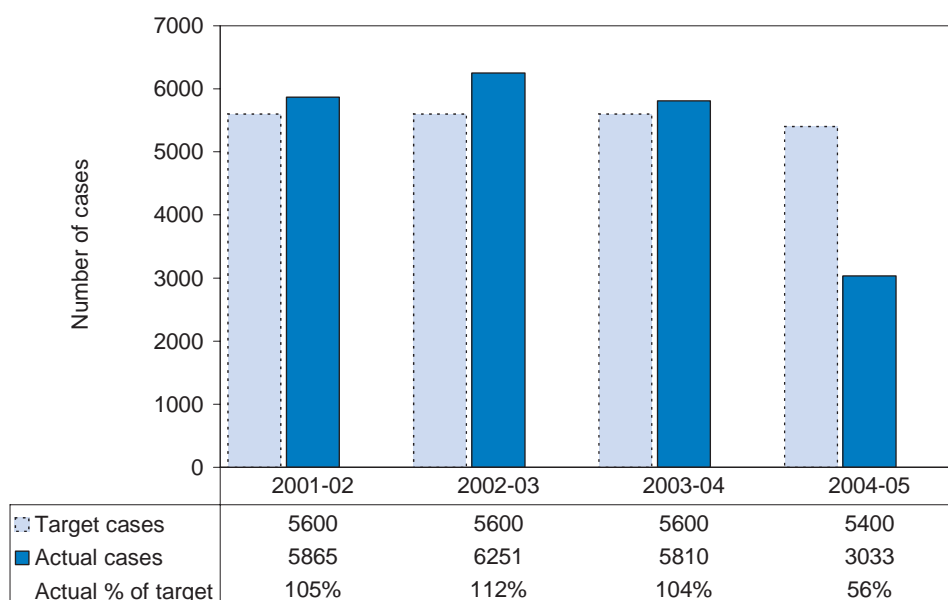
Source: ANAO analysis of MRT agreements and performance information.

RRT: case finalisation performance

5.44 As Figure 5.3 shows, RRT case finalisations were above target for the first three years of the period from 2001–02 to 2004–05. In particular, the RRT substantially exceeded target in 2002–03. These results were achieved against targets which remained static for the three year period. However, in 2004–05, RRT case finalisations were markedly below the lower target set for that year.

Figure 5.3

RRT: case finalisation performance against targets



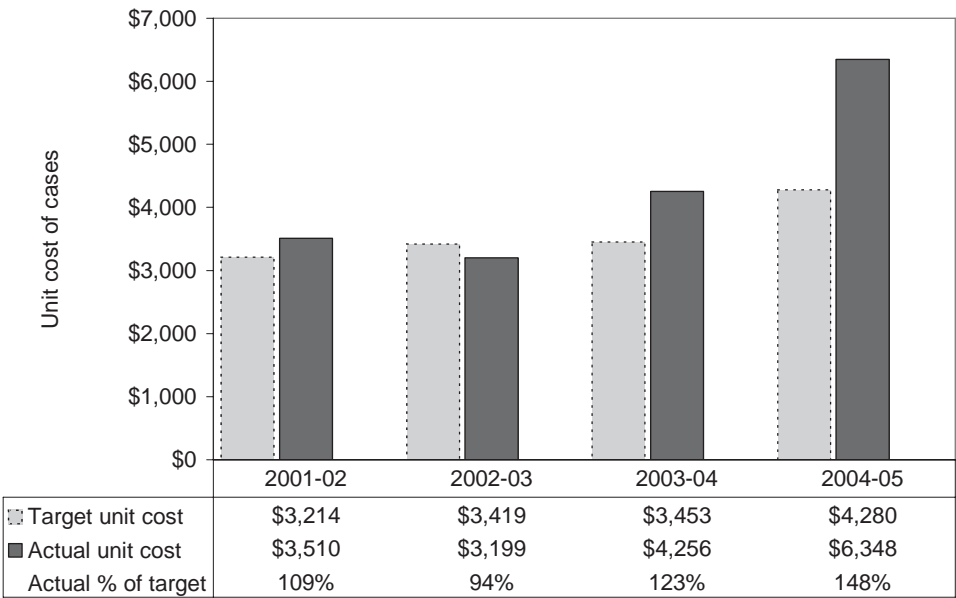
Source: ANAO analysis of RRT agreements and performance information.

RRT: unit cost performance

5.45 Figure 5.4 shows that RRT unit costs were within target in only one of the four years (2002–03). The unit cost of RRT cases was substantially higher than target in 2003–04 and markedly higher than target in 2004–05. None of the unit cost targets set for the four year period was stretching.

Figure 5.4

RRT: unit cost performance against targets



Source: ANAO analysis of RRT agreements and performance information.

Timeliness of case processing and decision-making

5.46 The Tribunals’ timely processing and determination of cases is important for the provision of high-quality client service and the expeditious resolution of the visa status of review applicants.

5.47 The ANAO analysed timeliness performance trends of the MRT and the RRT, particularly in terms of the average time to finalise cases; the age of cases on hand; and the finalisation of cases against performance targets.

5.48 From 2001–02 to 2004–05, the Tribunals improved the timeliness of processing of finalised cases; and reduced the backlog of older cases. However, 65 per cent of MRT cases in 2004–05 were finalised outside of the MRT time target covering processing from lodgement to finalisation. A comparable statistic for RRT cases finalised in the same year was not readily available.²⁹

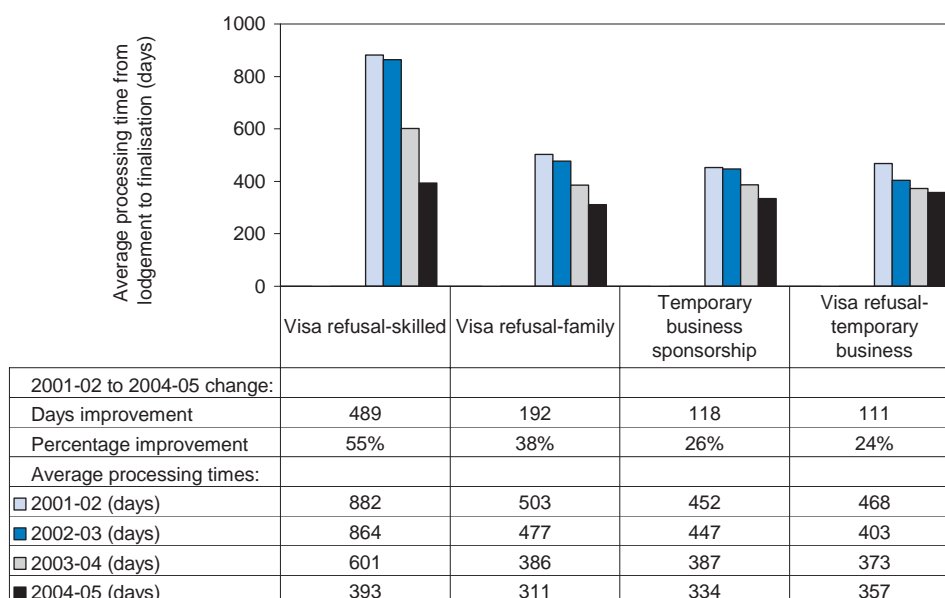
MRT: average processing times

5.49 The MRT reduced the average time for processing total MRT cases by 116 days (30 per cent), from 387 days to 271 days, over the four year period from 2001–02 to 2004–05 (see Figure 5.5 [c]).

Figure 5.5

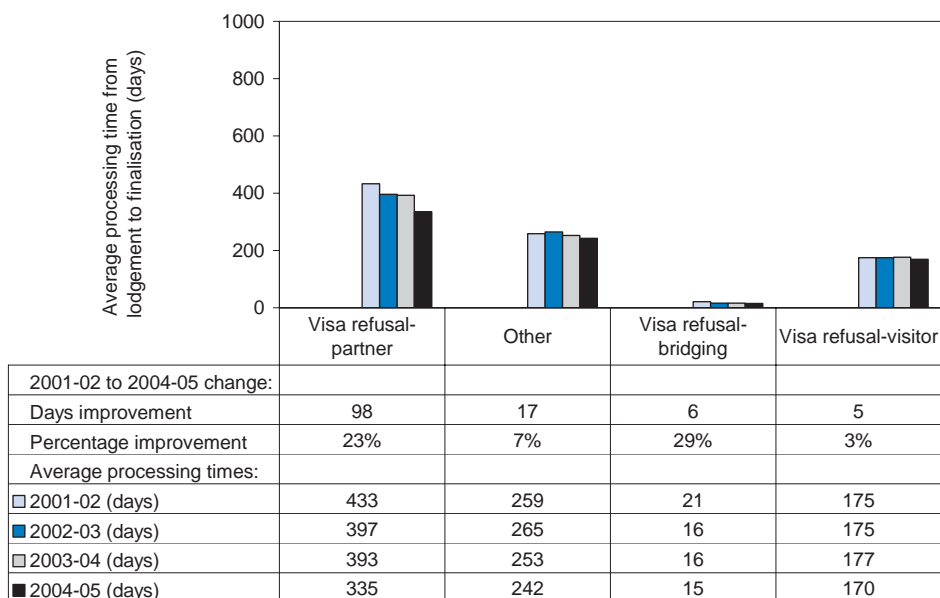
MRT: reductions in average processing times, by case category and for total MRT cases, 2001–02 to 2004–05

(a)

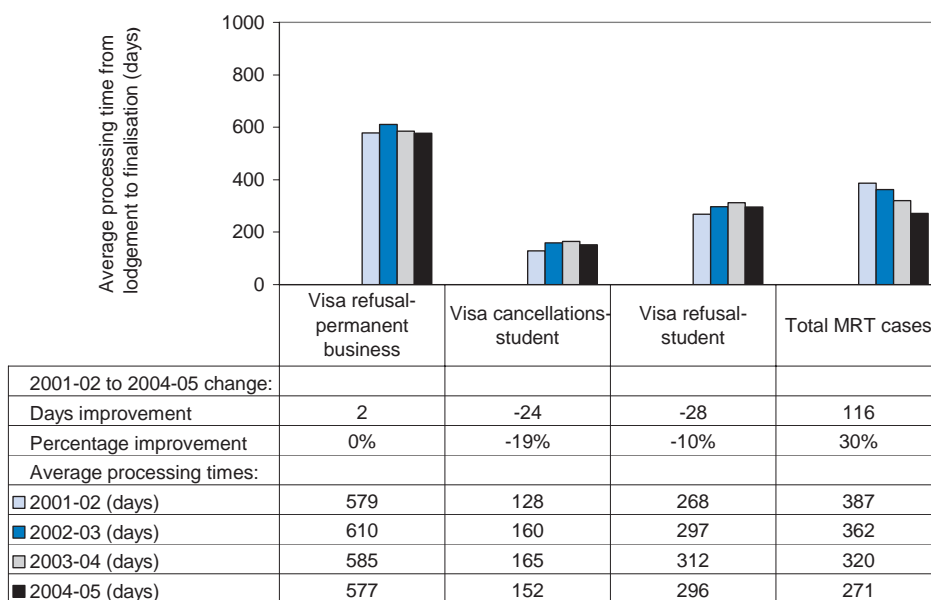


²⁹ As noted in paragraph 4.64, the RRT did not have a time target covering the entire period from lodgement to finalisation. However, both Tribunals had a time target for the period from allocation of cases to a Member until finalisation. The ANAO estimated that 21 per cent of RRT cases and 29 per cent of MRT cases finalised in 2004–05 were processed outside their time targets for this processing phase.

(b)



(c)



Source: ANAO analysis of Tribunal performance information.

5.50 There were substantial timeliness performance improvements for most of the case categories which had very lengthy average processing times (ranging from one to more than two years) in 2001–02, viz. skilled, family and partner visa refusals; and temporary business sponsorships and visa refusals.

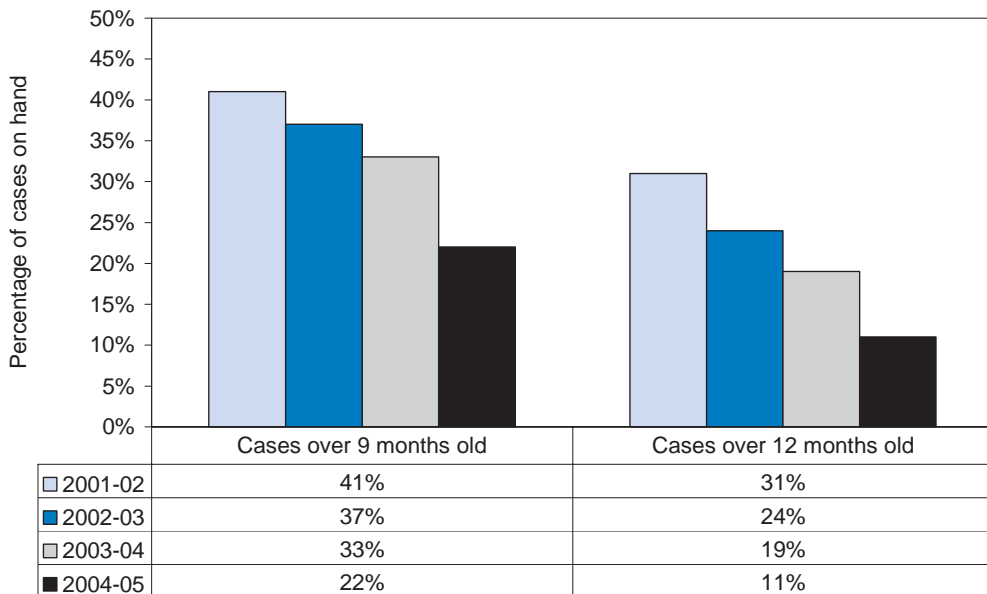
5.51 However, there was virtually no change in average processing times for permanent business visa refusals since 2001–02. These made up 3 per cent of total MRT caseload in 2004–05. They were mostly handled by a relatively small number of specialist Tribunal Members and Registry staff.

5.52 If the MRT is unable to sufficiently increase in-house resource capacity to undertake the case examination work for permanent business visa refusal cases, there would be merit in the MRT exploring other possible options, including contracting out of appropriate casework. This could help augment resources and reduce the extended processing times for these cases.

MRT: reduction in backlog

Figure 5.6

MRT: age of cases on hand, end of year, 2001–02 to 2004–05



Source: ANAO analysis of Tribunal performance information.

5.53 From 2001–02 to 2004–05, the MRT reduced the backlog of older unfinalised MRT cases. In particular, the proportion of cases on hand at the MRT which were over 9 months old decreased from 41 per cent to 22 per cent (see Figure 5.6).

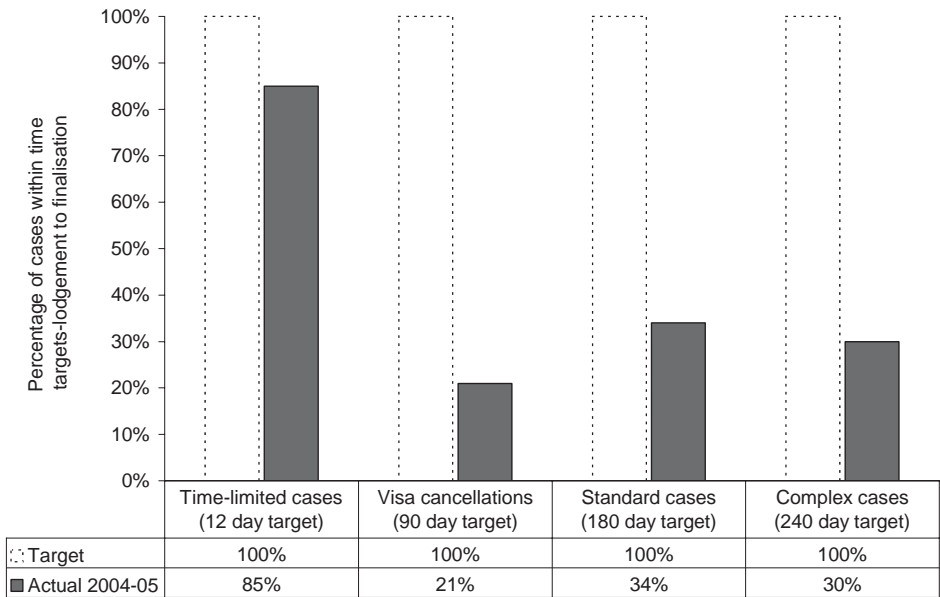
MRT: performance against time targets

5.54 Notwithstanding the reduction in average processing times and in the backlog of older cases since 2001–02, the MRT processed only 35 per cent of finalised cases in 2004–05 within applicable time targets covering the entire period of case processing from lodgement to finalisation.

5.55 Figure 5.7 shows timeliness performance for four specified types of MRT cases. The strongest area of timeliness performance was the processing of time-limited and other bridging visa cases. This case type represented about 10 per cent of total finalised MRT caseload in 2004–05. The MRT met its overall time target for 85 per cent of these cases in the first 11 months of 2004–05.

Figure 5.7

MRT: timeliness performance against time targets, 2004–05



Source: ANAO analysis of Tribunal performance information.

5.56 Several factors assisted the quick processing of most of this caseload, which was included in the Tribunal's highest case priority category. Time-limited cases were generally determined by Tribunal Members who were committed to deal with this casework for a specified time period. These Members were supported by special case teams of Registry staff selected for their suitability for this time-critical casework. The teams were usually fully-staffed and worked closely with Members to expedite case finalisation.

5.57 MRT timeliness performance in terms of its time targets was weakest in the processing of visa cancellations. These cases made up 17 per cent of total finalised MRT caseload in 2004–05. Only 21 per cent of visa cancellation cases were finalised within the MRT's time target of 90 calendar days in the first 11 months of 2004–05. The ANAO considered that processing of visa cancellation cases warranted closer Tribunal attention, given that they were included in the Tribunal's highest case priority category and the MRT was required by law to expedite their processing. The majority of visa cancellations, which related to student visas, were relatively straightforward cases for case decision-making.

5.58 The Tribunals advised that they have been addressing processing times for permanent business cases and student visa cancellation cases (discussed in paragraphs 5.51 and 5.57 above). ANAO review of average processing time data supplied by the Tribunals for these two case categories for the period since 2004–05 (see footnote 30) indicated that the Tribunals achieved substantial timeliness improvements for permanent business cases, but not for student visa cancellation cases. The Tribunals stated that the relative complexity of visa cancellation cases had increased since 2004–05 through court judgments and changes to legislation.³⁰

³⁰ Average processing times improved 40 per cent for permanent business cases and 6 per cent for student visa cancellation cases since 2004–05:

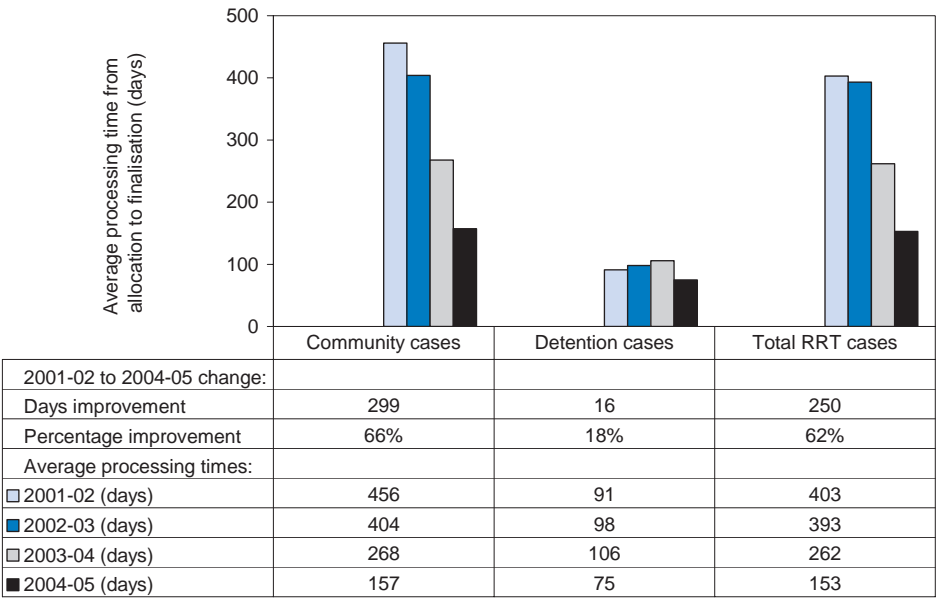
Case category	Average processing times (days)			
	2004–05	2005–06	2006–07 (Ytd Feb 2007)	Percentage change since 2004–05
Permanent business cases	577	474	347	40 per cent reduction
Student visa cancellations	152	145	143	6 per cent reduction

Source: ANAO analysis of Tribunal performance information.

RRT: average processing times

5.59 The RRT made substantial progress in reducing average case processing times since 2001–02. Average case processing times for RRT cases fell by 250 days (62 per cent), from 403 days to 153 days, over the four year period from 2001–02 to 2004–05. This reduction chiefly reflected improved processing times for community cases (Figure 5.8).

Figure 5.8
RRT: reductions in average processing times, 2001–02 to 2004–05



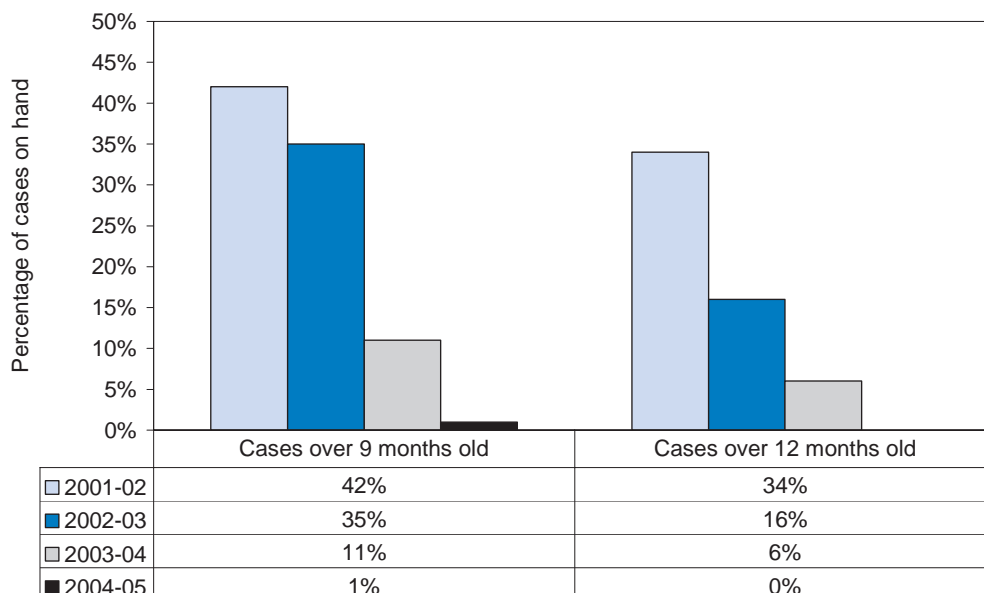
Source: ANAO analysis of Tribunal performance information.

RRT: reduction in backlog

5.60 Since 2001–02, the RRT virtually eliminated its backlog of older cases. The proportion of cases on hand at the RRT which were over 9 months old reduced from 42 per cent in 2001–02 to 1 per cent in 2004–05 (see Figure 5.9).

Figure 5.9

RRT: age of cases on hand, end of year, 2001–02 to 2004–05



Source: ANAO analysis of Tribunal performance information.

RRT: performance against time targets

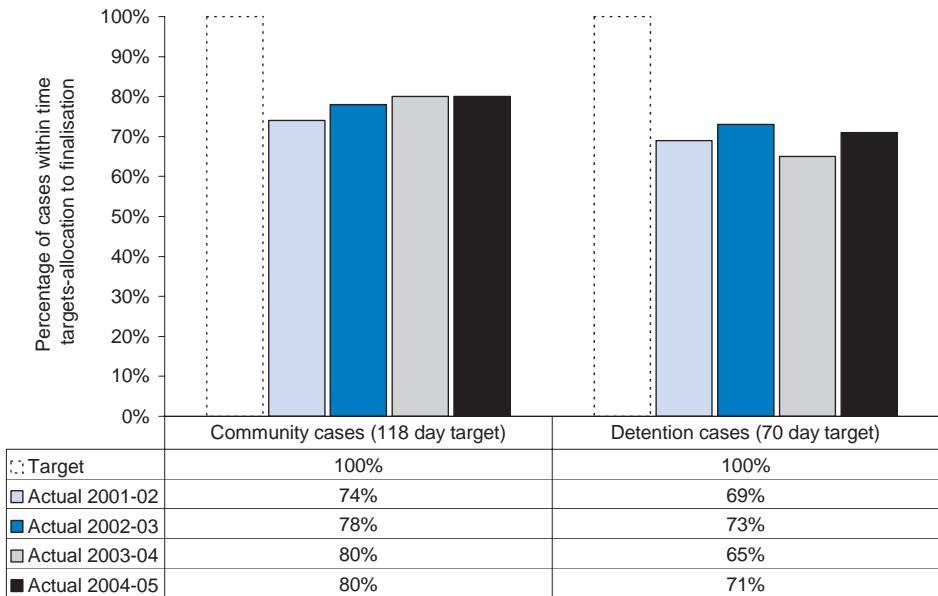
5.61 The RRT processed 79 per cent of cases finalised in 2004–05 within applicable time targets for detention and community cases, which excluded the period of case processing from lodgement to allocation to a Member.

5.62 Between 2001–02 and 2004–05, the proportion of detention cases processed within their applicable time target was lower than for community cases. Detention cases comprised 5 per cent of finalised RRT cases in 2004–05.

5.63 Figure 5.10 shows that 71 per cent of detention cases were processed within their time target in 2004–05. This represented only a slight improvement in timeliness performance for these cases since 2001–02, notwithstanding detention cases being the Tribunal’s highest priority during this period. Accordingly, the ANAO considered that it would be appropriate for the RRT to give particular attention to the timely finalisation of RRT detention cases.

Figure 5.10

RRT: timeliness performance against time targets, 2001–02 to 2004–05



Source: ANAO analysis of Tribunal performance information.

5.64 The Tribunals commented that they aim to deal with detention cases as quickly as possible, and report on, or clearly identify, detention cases in management and other caseload reports. As previously mentioned, a new MRT-RRT operational policy for the management of detention cases was issued by the Principal Member in January 2007.

5.65 The Tribunals advised that they do not expect that there is capacity for further significant reductions in processing times for detention cases. There are procedural fairness requirements to be met, and prescribed periods which provide applicants with time to seek advice and to prepare their case, or to respond to new information.

Tribunal action to finalise RRT reviews within 90 days

5.66 In June 2005, the Government announced that the Migration Act would be amended to provide for processing time limits of 90 days for both DIMA primary protection visa decisions and RRT reviews. The amending legislation for these time limits received assent in December 2005.

5.67 During the first half of 2005–06, the RRT developed and implemented a range of measures aimed at finalising reviews within the 90 day time limit. Table 5.4 identifies key Tribunal initiatives.

Table 5.4

RRT initiatives taken to finalise RRT reviews within 90 days, 2005–06

- Reassignment of Member resources from MRT to RRT casework.
- Improvements to Tribunal Registry arrangements for obtaining case files from DIMA.
- Increased Tribunal emphasis on expediting the allocation of new cases to Members and on Member finalisation of older cases.
- Transfer of cases between Registries to achieve more timely processing of these cases.
- More effective Registry utilisation of Tribunal hearing rooms.
- Provision of updated guidance for Members on effective RRT decision-making.
- Issuing revised directions to Members on the efficient conduct of RRT reviews.
- Enhanced design of Member caseload reports to highlight total case processing times.
- System access of Members to up-to-date, clearer information on the status of their caseload.
- Improved Registry monitoring of unallocated cases and the status of cases with Members.
- Development of case finalisation forms to record reason(s) that any case is determined outside the 90 day time limit.

Source: ANAO review of Tribunal papers.

5.68 As a result of these measures, new cases were allocated to Members more quickly and a number of very old cases were finalised. In 2005–06, the proportion of RRT cases processed within the 90-day time standard rose from 35 per cent at the end of the first quarter to 58 per cent at the end of the year.

Member productivity

5.69 The effectiveness of the Tribunals in the planning and use of available Member resources and the extent to which Members achieve productivity targets for case decision-making are key determinants of the Tribunals' performance, in terms of case finalisation volumes and timeliness.

5.70 The ANAO analysed the Tribunals' utilisation of Member resources and the productivity of Members in 2004–05.

Utilisation of Member resources

Member resource planning

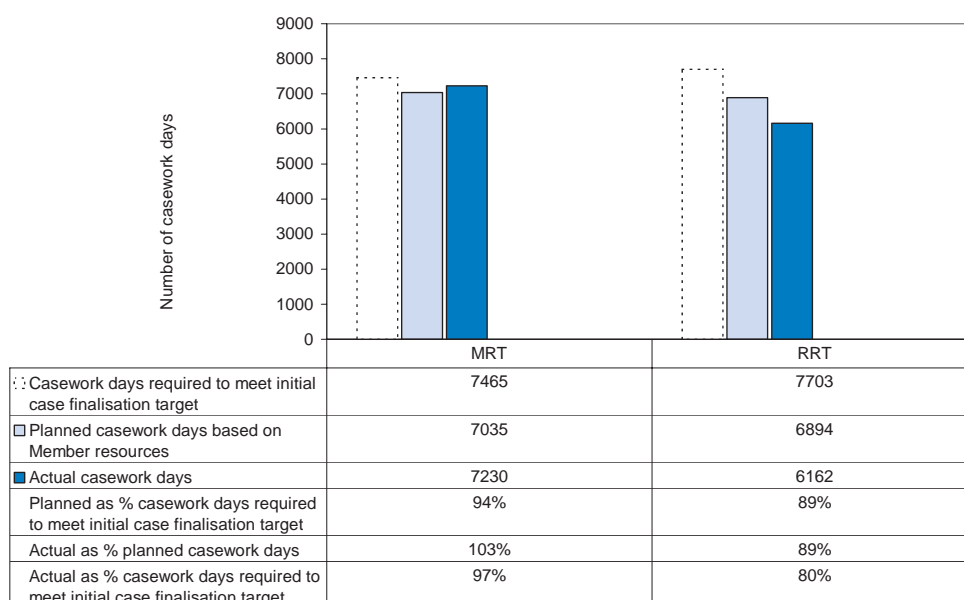
5.71 The Tribunal Member resources which the MRT and the RRT are able to employ on their caseloads reflects:

- the number of Members and their full-time or part-time appointment;³¹
- the number of days per week worked by part-time Members;
- the number of days spent on determining cases (casework days); and
- the number of days that cross-appointed Members spend on the casework of each Tribunal.

5.72 As part of their management of Tribunal operations, the Tribunals prepared estimates of the total planned casework days for each Tribunal and recorded actual casework days worked by Members during the financial year.

5.73 ANAO analysis of resource planning documentation prepared by the Tribunals early in 2004–05 indicated that the casework days that Members were planning to work during the year would not be sufficient to meet the Tribunals' case finalisation targets for 2004–05. Using the Tribunals' figures, there was a 6 per cent shortfall in MRT Member resources and an 11 per cent shortfall in RRT Member resources (see Figure 5.11).

³¹ Changes in Tribunal Member resources were analysed in paragraphs 2.28 to 2.33 in Chapter 2.

Figure 5.11**Tribunal casework days required, planned and achieved, 2004–05**

Note: The estimate of 7703 RRT casework days was based on its case finalisation target of 4000 cases for internal budget purposes, reduced from 5400 cases which had been specified in PBS papers.

Source: ANAO analysis of Tribunal resource planning and performance documentation.

5.74 However, the estimates prepared by the Tribunals were likely to overstate Member case finalisations from planned casework days. This was because the estimates had not made any provision to cover Members' personal leave entitlements (such as sick leave), which could amount to 9 per cent of full-time Members' planned casework days. Furthermore, the estimates were premised on Members' full achievement of productivity targets for 2004–05.

5.75 At the time of the preparation of these resource planning estimates, the Tribunals did not address the projected shortfalls in Member resources against casework days required to achieve case finalisation targets, and identify possible options to augment resources, for example, by offering further, additional casework days to part-time Members.³²

³² Earlier, in July 2004, the Tribunals had decided that part-time Members would continue their existing work patterns and former full-time Members re-appointed on a part-time basis would work three days a week. However, the Tribunals had approved an extra casework day per week for RRT Members.

Deployment of Member resources

5.76 In response to an unforeseen decline in RRT case lodgements and a shortfall in MRT finalisations which became evident in the course of the first half of 2004–05, the Tribunals did initiate action to make more effective use of available Member resources. These actions included offering MRT casework to cross-appointed RRT Members and additional casework days to all Members working on MRT cases. Some 5 per cent of the RRT caseload was also transferred between the Melbourne and Sydney Registries during the year, to help address resource/caseload imbalances.

5.77 As result of these initiatives, Members worked 3 per cent more casework days on MRT casework, and 11 per cent fewer casework days on RRT casework, than initially planned. Cross-appointed RRT Members accounted for 10 per cent of the MRT's total casework days worked in 2004–05. Notwithstanding these shifts in Member resources, the number of casework days actually spent on MRT casework was still below what would have been required to achieve the MRT's initial case finalisation target (see Figure 5.11).

5.78 While the Tribunals' initiatives made good use of available Member resources, the Tribunals could have been more prepared for the diminishing RRT caseload, and more responsive to the situation when it emerged. Scenario planning had not been undertaken for the decline in RRT cases, despite ongoing decreases in RRT cases on hand over several years. The Tribunals also did not initially give special attention to monitoring and responding to the drop in cases available for allocation to RRT Members, particularly in Sydney, in the first half of 2004–05. The key Tribunal decision to deploy additional cross-appointed RRT Members onto MRT casework was taken in December 2004, six weeks after the seriousness of the RRT case shortage was identified.

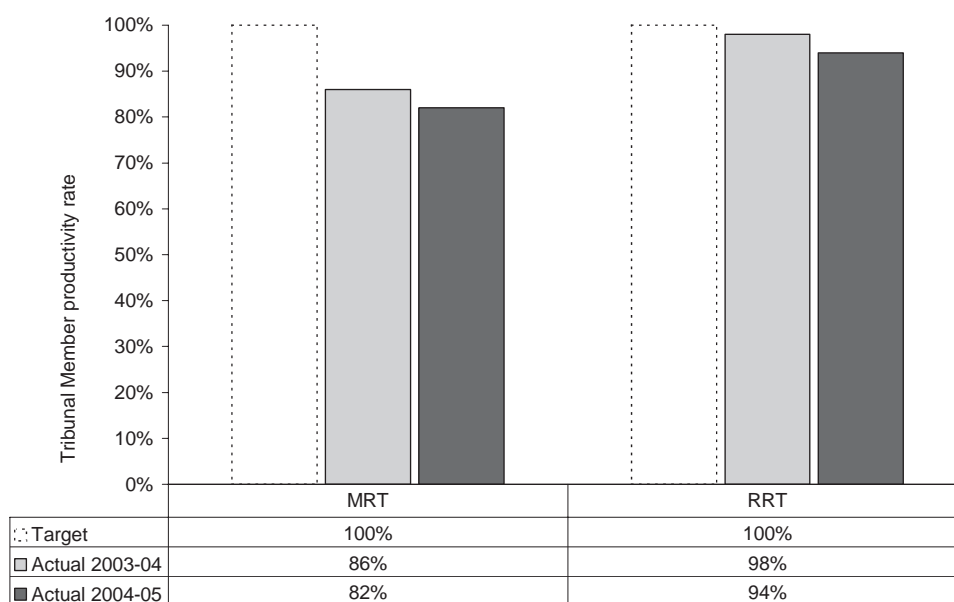
5.79 Future Tribunal resource planning would be enhanced by making adequate provision to cover the sick leave and below-target productivity of Members, to ensure that Tribunal estimates of available planned casework days are reasonable. It is also important that the Tribunals are fully prepared to deal with any major imbalance between caseload and Member resources, by undertaking scenario planning for such occurrences, and by closely monitoring case allocation statistics in circumstances where active caseload is very low.

Productivity of Tribunal Members

5.80 The Tribunals did not achieve their productivity targets for 2004–05. The MRT had an 82 per cent productivity rate, while the RRT had a 94 percent productivity rate. Both productivity rates were lower than recorded in 2003–04, despite reductions in the targets for 2004–05 (see Figure 5.12).

Figure 5.12

MRT and RRT: Tribunal Member productivity, 2003–04 and 2004–05



Source: ANAO analysis of Tribunal Member productivity statistics.

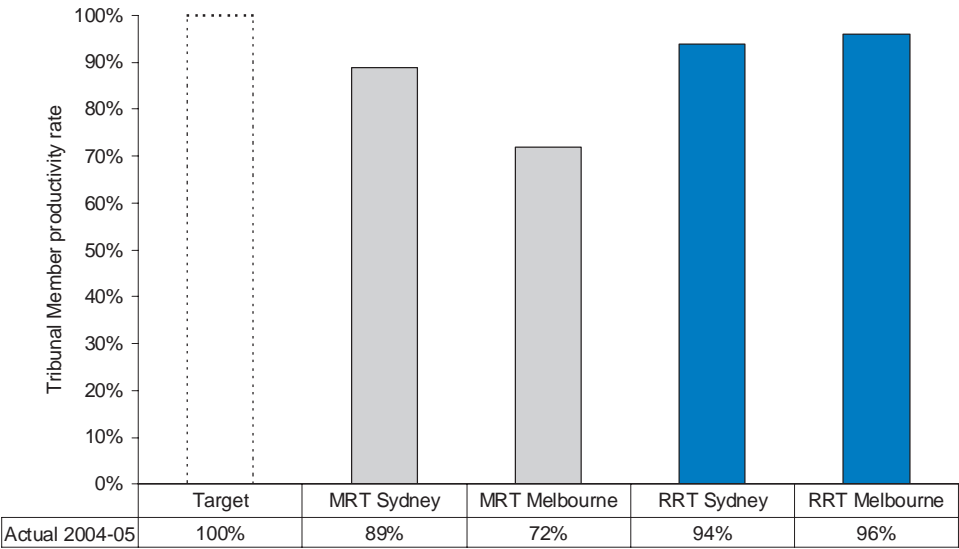
5.81 ANAO analysis of Tribunal Member productivity statistics for 2004–05 indicated that the productivity of the Sydney and Melbourne Registries was similar for RRT casework, but different for MRT casework (see Figure 5.13). The Melbourne Registry recorded an appreciably lower rate of MRT productivity than the Sydney Registry in 2003–04 and 2004–05. It would be appropriate for the Tribunals to identify underlying factors, including any case mix characteristics, which may account for such variations in the productivity of Registries and Tribunal Members.

5.82 The Tribunals acknowledged that there is variation in the productivity of Members within each Registry and variation in the average productivity between the Registries in Sydney and Melbourne. This pattern is influenced by a number of factors, including differences in the makeup of their caseload. The

Tribunals advised that this has been, and continues to be, monitored by Tribunal management. The Tribunals also noted that Member productivity targets have been adjusted over the years.

Figure 5.13

MRT and RRT: Sydney and Melbourne Registry productivity, 2004–05



Source: ANAO analysis of Tribunal Member productivity statistics.

5.83 The ANAO also identified a marked difference in the productivity of MRT Members with or without experience in working on MRT cases prior to 2004–05. Members who commenced work on MRT casework in 2004–05 had a 38 per cent productivity rate, whereas Members who had experience on MRT casework prior to 2004–5 had an 87 per cent productivity rate.

5.84 The MRT was aware that new Members usually take some time to reach the productivity expected of a more experienced Member. In 2004–05, it adjusted the casework days of Members commencing MRT work for the time spent on induction training. However, the MRT did not specify separate, lower initial productivity targets for these Members, to reflect their inexperience in the conduct of Tribunal casework.

5.85 The Tribunals’ setting of a series of graduated productivity targets for Members for, say, their first year of assignment to new Tribunal casework would appropriately recognise that such Members are likely to take time to reach the productivity rates of established Members.

5.86 The Tribunals indicated to the ANAO that their general approach has been to measure the ‘raw’ productivity of all Members in the same way. Notwithstanding this, the Tribunals did make some special provisions for new Members, through initial adjustment of their productivity calculations, initial assignment of less complex casework and having lower expectations (but not lower targets) for their productivity.³³ The Tribunals justified their approach on the basis that that it allowed the lower productivity of all Members, including new Members, to be reflected in aggregate Tribunal productivity figures reported in Annual Reports. However, the Tribunals stated that they intended to give further consideration to the ANAO suggestion.

Conclusion

5.87 The Tribunals report externally on their performance each year, mainly through their Annual Reports. A range of performance information is provided on their case processing operations, including some information relating to performance indicators in their outcomes and outputs frameworks.

5.88 The Tribunals did not effectively use their Annual Reports to report on the impact of their outputs-independent merits review of visa-related decisions-on desired outcomes, and their relative contribution to outcomes. A stronger Tribunal focus on the reporting of the effectiveness of Tribunal performance in terms of outcomes is crucial, for accountability purposes.

5.89 The Tribunal Annual Reports included considerable information on their output performance results and made extensive use of charts and tables, to present this information for report users. However, there is scope to strengthen the quality of several areas of Tribunal performance reporting. Performance results, such as case finalisation and case timeliness performance, were not reported against PBS targets which were specified in their outcomes and outputs frameworks. More analysis of factors which had affected performance results in the current year would assist report users to interpret the Tribunals’ operational performance. In addition, the Tribunals did not clearly articulate through their Annual Reports whether output performance had been satisfactory, relative to targets or previous performance results. As a

³³ The Tribunals advised the ANAO that these special provisions include initial adjustments to the productivity calculations for Members new to the Tribunals (20 casework days) or to MRT or RRT caseload (10 casework days). Over their first two to three months, these Members are assigned a limited range of less complex cases and encouraged to make use of support from nominated mentors or Legal Services Section staff. The new Members are also advised that it is not expected that they would reach full productivity in their first year, and that they should aim to progress towards 80 per cent.

result, Annual Report users would not obtain a clear and comprehensive view of Tribunal operational performance from the information provided.

5.90 For internal management purposes, the Tribunals had a structured set of internal reports, which were provided to senior management each month. This frequency of reporting met the performance needs of the Tribunals. The reports covered most relevant areas and aspects of Tribunal performance, including case processing volumes, case outcomes, and processing timeliness. However, the utility of internal reporting would be strengthened by introducing an overarching 'balanced scorecard'-type management report, which would provide Tribunal senior management with a concise overview of all major aspects of case processing. This type of overarching management report is a widely accepted business tool for highlighting areas of less satisfactory operational performance which require timely management action. In addition, the adoption of common formats, across both Tribunals and both Registries, for all management reports on particular areas of performance would help Tribunal management to interpret performance trends.

5.91 The Tribunals achieved mixed performance results in a number of areas from 2001–02 to 2004–05. Actual case finalisations were above target in most years, but unit costs were generally outside targets. Over the same period, the processing times of finalised cases improved, and the age of cases on hand was reduced. Notwithstanding these improvements, the Tribunals did not meet their time targets for case processing in 2004–05. The processing of permanent business visa refusals and student cancellations, where processing times had not improved since 2001–02, particularly required management attention.

5.92 Tribunal Member productivity was below target in 2004–05, especially for the MRT. The lower productivity of Members who commenced on MRT casework during the year contributed to the MRT performance result. There would be merit in setting a series of graduated productivity targets for such Members, who require time to become as productive as experienced Members.

6. Client Services to Applicants

This Chapter examines the Tribunals' commitment to, and provision of, client services to applicants for review of visa-related decisions.

Client service

6.1 Client service refers to the service experienced by applicants and their representatives in their interaction with the Tribunals.

6.2 Client service has many facets. Service charters set out the service commitments of agencies to service quality. User-friendly forms and guidance make it easier for applicants to provide all information required in relation to their cases. Services for clients with particular service needs ensure that special client groups have reasonable access to service provision. Effective complaints handling enables the identification and resolution of client dissatisfaction with services, while the assessment of client satisfaction with services can assist in the ongoing improvement of service performance.

6.3 This Chapter examines the following Tribunal client services:

- Client service charter.
- Application forms.
- Clients with particular service needs.
- Complaints handling.
- Assessment of client satisfaction with services.

Client service charter

6.4 Service charters are public statements that describe the service experience that clients can expect from agencies. Charters cover key information about the service delivery approach of agencies and the relationship that clients will have with agencies. The MRT and the RRT had separate charters until their issue of a new, joint charter in January 2006.

6.5 The ANAO assessed whether the Tribunals had regularly reviewed and updated their charters; used appropriate methods to promote the charters; and reported against service standards in their charters.

6.6 The ANAO also assessed whether the new charter covered key charter elements specified in the Australian Government's Client Service Charter Principles (the *Principles*).³⁴

Review, promotion and reporting in relation to previous charters

6.7 Although the Tribunals had undergone considerable change since their issue of service charters in 2001, the Tribunals did not regularly review and update the charters to ensure their ongoing relevance and effectiveness. The Tribunals initiated action to review their charters in mid-2004, and issued their new charter some 18 months later. A contributory factor to the delay in the development of the new charter was the time taken by the Tribunals to finalise their new corporate plan. The new charter was prepared without open consultation with client and community stakeholders. Recognised sound practice is to consult with clients and stakeholders during charter review.

6.8 Consistent with the *Principles*, it would be appropriate for the Tribunals to commit to more frequent review of the new charter, and to provide opportunities for stakeholder input, through community liaison processes. The Tribunals agreed that their new service charter should be reviewed regularly and in consultation with stakeholders.

6.9 The Tribunals employed several means to promote their service charters. For example, a brochure on the charter was sent to RRT applicants (but not MRT applicants) with their application acknowledgement letter. The charters were also published on the Tribunals' websites. In addition, induction training for Tribunal Members and staff included coverage of the charters.

6.10 Notwithstanding the use of these communication channels, there would be clear service benefit in the Tribunals' considering other options to increase client and staff exposure to the charter. This could include reference to the service charter in key information sheets for prospective applicants; charter brochure mail-out to all applicants; and charter signage in client areas. Consideration could also be given to the translation of key charter messages into the community languages of clients, as was already done by some other government agencies, in order to more effectively communicate with applicants with limited English language proficiency.

³⁴ Department of Finance and Administration, *Client Service Charter Principles, a Better Practice Guide for Preparing and Delivering APS Service Charters*, DoFA, Canberra, 2000.

6.11 The Tribunals did not monitor and report against the full range of service standards in their charters in their Annual Reports in recent years. Tribunal coverage of service quality issues focused mainly on reporting on the resolution of client complaints. The *Principles* require that agencies publish information against charter commitments in Annual Reports each year.

6.12 It would be appropriate for the Tribunals to identify efficient and effective ways of capturing relevant service performance information, to meet the accountability requirements for reporting on performance against the service standards in their new charter. This information would also help the Tribunals to identify areas of client service in need of improvement. Possible means of obtaining this information could include the maintenance of Registry records of the provision of certain services, periodic review of compliance with particular service standards, and/or the conduct of surveys of migration agents and clients who used specific services.

Coverage of key charter elements in the new charter

6.13 The *Principles* specify that agency charts should cover: what an agency does; how clients can contact and communicate with the agency; the standards of service that clients can expect; clients' basic rights and responsibilities; and how clients can provide feedback or make a complaint.

6.14 ANAO review of the Tribunals' new charter indicated that it addressed the five key elements required of a charter. However, coverage of some matters which are likely to be important to clients and stakeholders could be strengthened in the new charter (see Table 6.1). In particular, it would be desirable to state whether the Tribunals' service standards are service aims or guarantees; to specify publishing arrangements for the time standards for case finalisations in accordance with the Tribunals' service commitment; and to clarify the procedures for complaints involving Registry services or Members.

Table 6.1

Coverage of key charter elements in the new Tribunal charter, 2006

Coverage	ANAO comment
Information about the Tribunals	
<p><u>Who the clients are</u></p> <p>The charter expressed the Tribunals' service commitment to <i>review applicants and other persons with whom they deal</i>.</p> <p>Review applicants were implicitly defined as persons dissatisfied with a <i>relevant decision</i> of the Minister or a delegate.</p>	<p>The charter provided an appropriate, implicit definition of review applicants. However, the charter could more clearly identify who the Tribunals' main clients are. This could be done by referring to the main types of decisions which are reviewable by the Tribunals; and to persons who may have standing to apply for review (in some cases, these persons are sponsors or close relatives).</p> <p>The charter did not mention that review applicants may deal directly with the Tribunals, or may authorise migration agents or certain other representatives to act on their behalf.</p> <p>As most review applicants use the services of representatives, charter coverage of the role of representatives would be desirable.</p>
<p><u>The relationship between the Tribunals and DIMA</u></p> <p>The charter identified that the Tribunals provide an independent merits review of decisions made by the Minister and DIMA officers.</p>	<p>The charter made appropriate, but incomplete reference to the Tribunals, the Minister and the Department.</p> <p>It would be desirable for the Tribunals to state that they are statutory bodies and are not part of DIAC/DIMA.</p>
Client communication with the Tribunals	
<p><u>Tribunal contact details</u></p> <p>The charter provided details of the Tribunals' Sydney and Melbourne Registries, including their street, post and web addresses, and telephone and fax numbers.</p>	<p>The provision of Tribunal contact details in the charter was appropriate, but incomplete. For completeness, reference could be made to the Tribunals' preferred arrangement for review applications to be sent to the Melbourne or the Sydney Registry, depending on the State or Territory of residence of applicants; and to arrangements for the lodgement of MRT applications in person with the AAT in Brisbane, Adelaide and Perth. The Tribunals' e-mail addresses for client enquiries could also be identified.</p>
Client service standards	
<p><u>Service standards</u></p> <p>The charter outlined a range of service standards to clients.</p>	<p>The service standards specified in the charter covered various aspects of the quality of the Tribunals' relationship with clients; and the quality and timeliness of their services.</p> <p>The charter did not make clear whether the Tribunals' specified service standards were service aims (achievable standards to be met on the majority of occasions) or service guarantees (standards that will always be met on all occasions).</p> <p>It would be desirable to clarify the status of the Tribunals' service standards, to provide clients with a realistic expectation of the quality of service being provided by the Tribunals.</p>
<p><u>Publication of overall timeliness standards</u></p> <p>The charter stated that overall time standards within which the Tribunals aimed to complete reviews would be published.</p>	<p>Notwithstanding this service commitment, the Tribunals did not publish their overall time standards in the charter or in a separate readily available publication for clients.</p> <p>To meet their service commitment, it is essential that the Tribunals make time targets readily accessible to prospective clients and inform clients of time targets applying to their case. This could be done in the Tribunal letter acknowledging receipt of applications.</p>

<p><u>Timeliness standards for specific services</u></p> <p>The charter contained time standards for two specific Tribunal services:</p> <ul style="list-style-type: none"> the written acknowledgement of the receipt of applications within two working days; and the acknowledgement of receipt of complaints within five working days. 	<p>The specification of a standard for the acknowledgement of review applications and complaints in the charter was useful, in providing assurance to clients that their communications had been received.</p> <p>The Tribunals' new charter did not retain a number of timeliness targets for particular services, which were contained in previous charters. These included MRT targets that aimed to:</p> <ul style="list-style-type: none"> answer telephone calls within 60 seconds; return calls within 24 hours where staff were unavailable at the time of calls; reply to written enquiries with 10 days; and have Registry staff available 30 minutes before a client's first scheduled hearing, to answer their questions. <p>It would be desirable for the Tribunals to obtain assurance from stakeholders that their current timeliness targets are for those contacts that occur most frequently and matter most to clients.</p>
Client rights and responsibilities	
<p><u>Rights and responsibilities</u></p> <p>The charter covered client rights and responsibilities.</p>	<p>In addition to the range of client rights and responsibilities which are contained in the charter, there would be merit in the Tribunals listing an additional client responsibility—<i>Attending the hearing appointment made for you</i>. This is because the hearing appointment is a crucial part of the review process for most applicants. The cancellation and rescheduling of hearings usually delays the finalisation of cases and affects Tribunal efficiency.</p>
Client feedback and complaints	
<p><u>Client feedback and complaints mechanisms</u></p> <p>The charter outlined mechanisms by which clients may make comments on the standard of service received, or may make complaints.</p>	<p>The complaints processes specified in the Tribunals' 2006 charter and the 2005–06 Annual Report differed from those which had been previously set out in Tribunal documentation.</p> <p>Previous Tribunal documentation identified separate arrangements applying to <i>Registry service complaints</i> and <i>complaints about Members' conduct</i>. Registry service complaints were to be handled through a three-step Registry complaints escalation process, whereas complaints about Members were to be communicated directly to the Principal Member. It would be appropriate for the Tribunals to clarify whether these arrangements are now superseded by those in the charter.</p>

Source: ANAO analysis of the Tribunals' 2006 Service Charter.

6.15 The Tribunals advised the ANAO that the current service charter was put in place as an interim measure to replace the separate MRT and RRT charters. The Tribunals also commented that the charter sets out service aims (rather than guarantees); time standards for case processing are now set out in Principal Member Directions available on the Tribunal websites; and it is intended that all complaints are sent to the Principal Member, whether they relate to Members or other matters, to simplify complaints handling.

6.16 While the inclusion of Principal Member Directions on the Tribunal websites enhances the general transparency of their operations, the ANAO considers that these documents are not effective means to communicate processing time targets to clients. These Principal Member Directions are primarily intended to inform Members and staff about the efficient conduct of MRT and RRT reviews. The publication of time standards for case finalisations in a more accessible and readable format would be of clear benefit to clients.

6.17 The ANAO also considers that the Tribunals' intention to escalate all complaints directly to the attention of the Principal Member is not likely to be the most efficient or effective approach to complaints handling available to the Tribunals. A multi-step escalation process for the resolution of complaints relating to Sydney and Melbourne Registry operations would better accord with recognised good efficient practice. It would be appropriate for the Tribunals to give further consideration to this particular matter.

Application forms

6.18 Well-designed forms make it easier for clients to provide agencies with comprehensive and accurate information. They also support the efficiency of agencies, by helping to reduce rework when clients do not provide required information. The Tribunals' most important forms are their application forms.³⁵

6.19 The ANAO assessed whether the Tribunals' business processes for the review and redesign of their application forms were effective; and application forms in use in 2005 were user-friendly for review applicants.

³⁵ Other forms are used for specific purposes related to Tribunal reviews. These include applying for MRT fee waiver; appointing representatives or authorised recipients for correspondence; requesting access to documents; advising changed contact details; and withdrawing applications.

Review of application forms

6.20 The Tribunals issued new MRT and RRT review application forms in March 2005. The ANAO focused on Tribunal processes for review of the MRT application forms, which resulted in substantial changes to those forms.

6.21 The Tribunals had a structured approach to form redesign, including initial form development work by its policy and procedures section, and consultation with operational managers and staff on draft designs. This included input from Tribunal specialist legal staff and Registry staff who processed forms at the point of lodgement. The final designs of the new forms were approved by the Principal Member in accordance with requirements.

6.22 The changes made to the forms assisted the MRT to meet its obligation to notify DIMA of migrant agents who had been appointed as applicants' representatives and reflected the Tribunals' changed policy on correspondence with applicants. Consistent with the increasing integration of Tribunal operations, the new MRT forms adopted the style and format of the RRT form.

6.23 The new forms provided more guidance material for applicants; improved the sequencing of some questions; and simplified requirements for recording addresses of multiple applicants and details of the decision to which the application relates.

6.24 The overall timeframe for consultation and clearance of the MRT forms was lengthy, extending from the completion of initial work on the redesigned forms in June 2004 until the issue of the revised forms in March 2005. As a result of this delay, it was necessary for the Tribunals to provide applicants with supplementary information on its changed correspondence policy from November 2004 onwards, because the existing forms contained information on this matter which was no longer correct.

6.25 The Tribunals' form review business processes did not include stakeholder consultations, sample analysis of client errors and omissions in completion of existing forms, or forms readability testing using computer software or expert consultancy services. The incorporation of these processes into future Tribunal forms design would provide increased assurance that the forms meet the needs of applicants.³⁶

³⁶ Reference is made to stakeholder consultation, analysis of form completion, and readability testing practices in ANAO Audit Report No.26 2005–06, *Forms for Individual Service Delivery*, p.51, pp. 73–78.

Design of application forms and supporting guidance

6.26 Effective form design assists clients to access the services of agencies. Forms are user-friendly when applicants are able to readily identify the particular form they need; to understand the form and related guidance material; and to easily begin to fill in the form. Attributes of effective forms were identified in the ANAO Better Practice Guide, *User Friendly Forms*.³⁷

6.27 At the time of audit, the Tribunals had three application forms:

R1	RRT application for review form
M1	MRT application for review form (for applicants not in detention)
M2	MRT application for review form (for applicants in detention)

Note: The second MRT form had additional sections which were completed by detainees to request that they or other persons appear before the Tribunal.

6.28 Table 6.2 analyses the Tribunal application forms in use in 2005, in terms of a number of the major recognised attributes of user-friendly forms. These forms assisted the Tribunals to obtain information that was necessary to process reviews. However, there was scope to improve several key areas of form design, for the benefit of applicants. This included the inclusion of explanatory guidance regarding the forms, closer linkage between form sections and supporting guidance, and the sequencing of form sections.

6.29 In particular, the forms did not provide applicants with clear guidance on their purpose or the main matters in the forms. In addition, the forms separated the form sections to be completed by applicants from supporting guidance. This did not help applicants to make a ‘quick start’ to fill in the form.

6.30 There was a logical sequencing of most sections of the forms, but the sequencing of the initial four sections of the main MRT form was not easy to follow. The design of these form sections could be improved to stream applicants to fill in the correct form sections relevant to their circumstances.

³⁷ ANAO Better Practice Guide-User-Friendly Forms. Key Principles and Practices to Effectively Design and Communicate Australian Government Forms, January 2006, pp. 5–12.

Table 6.2

Extent of inclusion of user-friendly features in Tribunal application forms

User-friendly features	Use in forms	ANAO comment
Clear purpose, stated at the outset		
Form purpose in the form title on the front page	P	<p>Each form had a succinct title 'Application for Review', which identified its purpose. However, this form title did not head the front page of the form document. Instead, the header, 'Information for Applicants' was used on the front page of the form.</p> <p>This header was used because the form had two parts: a front part of guidance material, followed by a back part of the form to be completed by the applicant.</p> <p>Inclusion of the form title in both locations would make the form more user-friendly.</p>
Explanation of the purpose of the form and matters covered	X	<p><u>Explanation of the purpose of the form</u></p> <p>The front guidance material of each form at the outset covered a range of requirements for the lodgement of review applications. While this information was important, it did not need to appear first on the form.</p> <p>None of the forms provided a clear, adequate explanation of the purpose of the form. It is crucial that forms explain their purpose to applicants.</p> <p><u>Identification of the main matters covered in the form</u></p> <p>None of the forms identified at the outset the main matters which were covered in the form and for which information was required to be completed by applicants.</p> <p>Informing applicants about matters covered in the form would help alert them to important issues that they would need to consider. These issues included whether to nominate a representative or authorised recipient for Tribunal correspondence.</p> <p>Up-front specification of matters to be covered in the form is also useful in helping to give applicants a sense of progress as they work through the form.</p> <p><u>Explanation of rationale for inclusion of matters</u></p> <p>Each form did not explain how the matters included on the form and information completed by applicants would help the Tribunal to process the review application and/or assist the applicant during the review process.</p> <p>Stating the rationale for the inclusion of matters covered in the form helps is likely to elicit more complete responses from applicants.</p>
Use of form identifiers	✓	Each form identified the Tribunal which issued the form and had a unique identifier (M1, M2 or R1), which distinguished it from other forms.
Quick start on form possible		
Introductory material kept to a minimum	X	<p>Each form had a front part of guidance material. This was from two to four pages in length. Most of the supporting guidance in the form was in this part.</p> <p>The presentation of almost all guidance material up-front did not help applicants to make a 'quick start' to fill in the form.</p> <p>Integration of relevant guidance material with each form section or question in the form would provide applicants with a more user-friendly form design.</p>

Short and concise length		
Conciseness and consistent coverage of matters in form		<u>Shortness of form</u> The part of the form to be completed by the applicant was organised into seven to nine sections and was from four to seven pages in length. This was relatively short.
	P	<u>Differences in supporting guidance in forms</u> There were differences between the forms regarding provision of guidance on accessing immigration assistance, including migration agents and other services. The RRT form contained much less information. It would be desirable to include similar, appropriate information about these matters in guidance on the three forms, to help applicants to make informed decisions about their service needs. There were also differences between forms in their guidance on the time limit by which applicants must lodge their review application. Inclusion on all forms of the clearest advice—that the notification letter of the DIAC/DIMA decision states the time limit applying to the applicant—would help remind applicants of their time limit.
Minimum complexity		
Use of pick lists	✓	Pick lists were provided for applicants to tick boxes for their answers to questions.
Simple declaration requirements	X	MRT and RRT forms had different declarations to be completed by applicants, their representatives and/or interpreters. Some of these requirements increased the complexity of form completion. There would be benefit in their simplification.
Use of checklists	X	Checklists were not provided at the end of forms to remind applicants to check their application; provide any supporting documentation; and enclose any MRT fee due.
Effective layout		
Use of answer boxes	✓	Answer boxes were placed consistently throughout the forms. Answer boxes generally provided sufficient room for responses from applicants.
Use of grids	✓	Grids were mostly provided to assist applicants to record numbers.
Sequencing of forms		
Sequencing of form sections		The sequencing of most form sections was logical. However, the initial sections of the main MRT form were not easy to follow, notwithstanding text advice provided to help review applicants to skip sections not relevant to them. Individuals and corporate bodies applying for reviews were required to identify and fill in the two or three correct form sections relevant to their circumstances, to record their details and the separate details of visa applicants where applicable.
	P	A more logical sequencing of these form sections would be to ask review applicants at the outset to identify the basis for their right to apply for review and then to identify, where appropriate, whether they were applying as an individual or on behalf of a corporate body. Pick list responses to these two questions would then stream review applicants to one or two further, initial form sections.
Use of cross-references	X	Form sections did not have cross-references to guidance material in the front part of the form, to assist applicants to complete information.

Legend: ✓ Feature used; P Feature partially used; X Feature not used.

Source: ANAO analysis of Tribunal application forms, in terms of major attributes of user-friendly forms.

6.31 The forms incorporated a number of user-friendly features which helped to minimise complexity and to provide effective layout. These included pick lists for applicants to tick appropriate boxes; answer boxes to record responses to questions; and grids to fill in numbers. However, MRT and RRT forms had different declaration requirements which added to form complexity. None of the forms incorporated check lists to help ensure that forms were properly completed and signed; and that appropriate supporting documentation and applicable MRT fees were submitted with the review application forms. Supporting guidance on obtaining immigration assistance and review application time limits was also not standardised across the forms.

6.32 Investment in effective form design is important for the provision of high-quality client service and for agency administrative efficiency. Forms are also core corporate products which convey messages about agency professionalism and client focus. The profile of the Tribunals' client base, which includes many applicants who have limited English language proficiency and/or are not represented by migration agents, reinforces the need for Tribunal forms to be user-friendly. It would, therefore, be appropriate for the Tribunals to improve, with specialist assistance where needed, the guidance to applicants on the forms and the structure and format of the forms.

6.33 The Tribunals agreed that the content, structure and design of application forms is very important and considered the ANAO Better Practice Guide, *User Friendly Forms* to be a very useful publication.

6.34 The Tribunals advised that the MRT and RRT forms are currently undergoing redesign. The Tribunals intend to seek input from stakeholders and specialist advice on the design of the new forms. The Tribunals are aiming for consistency in MRT and RRT form design, while noting that the general MRT form is inherently more complex.

Clients with particular service needs

6.35 The Tribunals had a range of clients with particular service needs. These included the client groups shown in Table 6.3.

Table 6.3

Client groups with particular service needs

People who lived outside Sydney and Melbourne, and were unable to visit a Tribunal Registry to access services or to attend hearings.
People who had limited or no proficiency in the English language, and needed interpreter assistance in their interactions with the Tribunals.
People who represented themselves and did not nominate migration agents to assist them in the representation of their cases.
People with disabilities.

Source: ANAO analysis of Tribunal papers.

6.36 The Tribunals explicitly or implicitly identified the four client groups listed above as having particular service needs, made specific service commitments to a number of these identified client groups, and provided various services and facilities to enable client groups with particular service needs to have reasonable access to the review processes of the Tribunals.

6.37 There is scope for more effective communication to applicants of the Tribunals’ commitment to assist people with special needs; and for accountability reporting on the usage of services such as the 1300 national enquiry service; Translating and Interpreting Service (TIS) assistance; and video-conferencing arrangements. The benefits and costs of possible additional support for self-represented applicants could also be considered.

Clients who lived outside of Sydney and Melbourne

6.38 Table 6.4 shows the national geographical distribution of review applicants, based on Tribunal analysis of their addresses, in 2004–05.

Table 6.4

Tribunal case lodgements, by address location, 2004–05

Tribunal	NSW	VIC	WA	SA	QLD	TAS	ACT	NT
MRT	49%	29%	7%	5%	8%	1%	1%	0%
RRT	63%	20%	6%	8%	3%	0%	0%	0%

Source: ANAO analysis of Tribunal performance information.

6.39 The Tribunals provided clients with full services at their Registries in Sydney and Melbourne. In addition, AAT Registries in Brisbane, Adelaide and Perth provided limited services for the Tribunals in those three cities.³⁸

6.40 The Tribunals' Registries in NSW and Victoria were in appropriate locations, as some 78 per cent of MRT applicants and 83 per cent of RRT applicants lived in those States in 2004–05. The Tribunals' cooperative service delivery arrangements with the three AAT Registries and the basing of some Tribunal Members in those Registries extended service accessibility to review applicants in three other States, at relatively low cost to the Tribunals. There would be benefit in the Tribunals reporting on the extent of service reach of applicants achieved from the conduct of hearings in the five State capital cities.

6.41 The Tribunals addressed the service needs of applicants who were unable to visit Tribunal Registries, by provision of various alternative service delivery arrangements, including those listed in Table 6.5.

Table 6.5

Service delivery arrangements outside of Tribunal Registries

Operation of a national enquiry 1300 telephone number.
Website information on Tribunal operations and access to forms and publications.
Applicant lodgement of forms and submissions by post or facsimile.
Conduct of hearings by video-conference or telephone-conference.

Source: ANAO analysis of Tribunal papers.

6.42 Some industry and community stakeholders had expressed concern at various times about the use of video-conferences for hearings, in terms of natural justice for applicants, and differences in access and equity amongst applicants in their capacity to appear in person at hearings. The publication of comparative statistics on case outcomes for hearings at which applicants appeared in person or used video-conferencing could address these concerns.

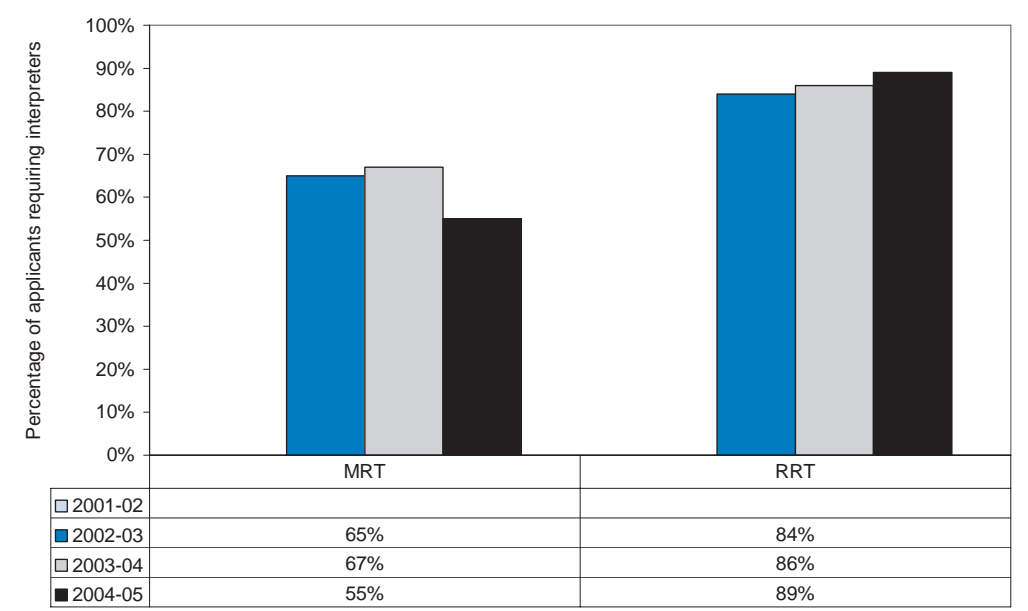
³⁸ In particular, AAT staff assisted with the reception of review applicants and support for hearings conducted at their facilities by part-time cross-appointed Tribunal Members based in the three cities. AAT staff also assisted with the receipt of MRT applications lodged at their Registries.

Clients who had limited or no English language proficiency and needed interpreter assistance

6.43 The majority of Tribunal applicants attending hearings in the period from 2002–03 to 2004–05 required interpreter assistance (see Figure 6.1).

Figure 6.1

Tribunal applicants requiring interpreters at hearings, 2001–02 to 2004–05



Source: ANAO analysis of Tribunal performance information.

6.44 The Tribunals addressed the service needs of applicants with limited or no English language proficiency, by providing them with contact details to access TIS telephone interpreter assistance, and by arranging for an interpreter to be present at their review hearing with the Tribunal Member.³⁹

6.45 The availability of TIS interpreter assistance was mentioned in the service charter, in review application forms (in 28 community languages), and in information sheets. The need for interpreter services at hearings could be identified by applicants on their application form or their reply to notification of their hearing, or by the Tribunal Member who was to conduct the hearing.

6.46 The Tribunals' practice was to engage qualified interpreters⁴⁰ for hearings, whenever they were required, at no financial cost to the applicant in line with provisions set out in the Migration Act. The Tribunals also produced handbooks for interpreters, to inform them of service requirements.

6.47 Inadequate interpreting of the evidence given by review applicants at hearings resulted in the remittal of some judicial review cases to the Tribunals for reconsideration. The quality of interpretation was also the subject of a small number of complaints by representatives of review applicants. The latter cases were dealt with through the Tribunals' complaint handling processes.

³⁹ The Tribunal Registries also maintained lists of staff who were proficient in languages other than English, who could assist in communicating with applicants if necessary.

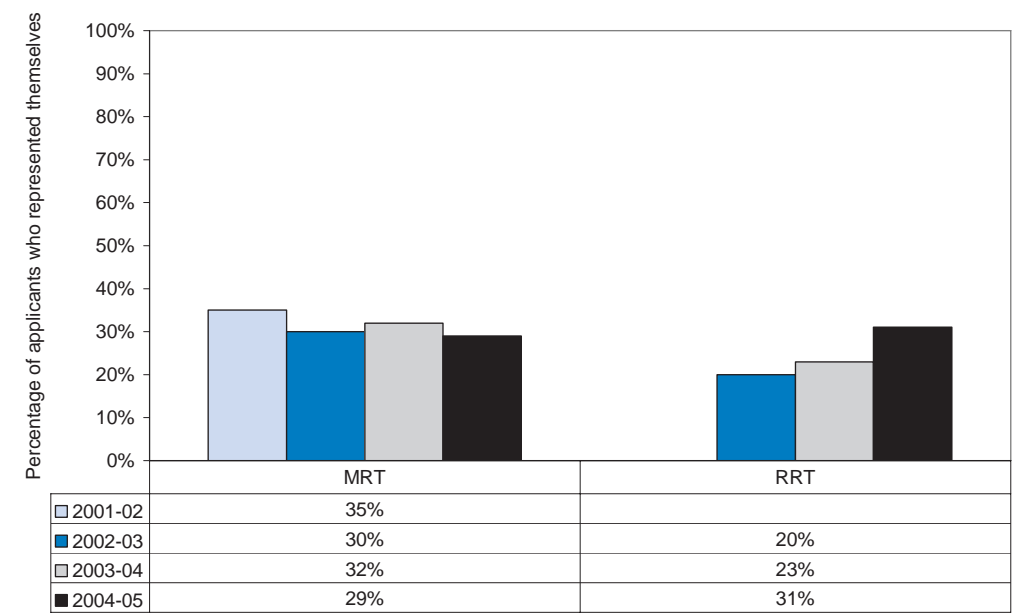
⁴⁰ The Tribunals aimed to use interpreters who had 'interpreter' level accreditation from the National Accreditation Authority for Translators and Interpreters (NAATI).

Clients who represented themselves

6.48 Figure 6.2 shows the proportion of self-represented applicants, in the period from 2001–02 to 2004–05.

Figure 6.2

Applicants who represented themselves, 2001–02 to 2004–05



Source: ANAO analysis of Tribunal performance information.

6.49 The Tribunals indicated their commitment, in their Annual Reports, to ensuring that review outcomes did not depend on whether applicants obtained professional advice or assistance. They also stated that there had been a particular effort made to tailor their documents, procedures and practices to suit applicants who proceeded without expert representation.

6.50 Some general information sheets prepared by the Tribunals were likely to be useful to self-represented applicants looking for information on Tribunal procedures and practices. In particular, the RRT’s brochure *What is a hearing?* outlined how a hearing was conducted and included a small number of illustrative photographs of the hearing process. Consideration could be given to producing a similar brochure to assist MRT applicants, including those representing themselves, to better understand the hearing process.

6.51 The Tribunals did not offer any customised assistance in relation to Tribunal procedures and practice specifically for self-represented applicants, to help familiarise them with the review process. Another tribunal, the AAT, did provide an outreach program on procedures for self-represented applicants. This service was conducted by an AAT staff member over the phone, with an interpreter available where necessary. There would be merit in the Tribunals obtaining information about the AAT's outreach program and assessing its potential value for additional Tribunal support for self-represented applicants.

6.52 Comparative statistics on case outcomes for applicants who represented themselves or used migration agents were not publicly reported in recent years. The MRT's predecessor, the Immigration Review Tribunal, had reported these statistics in 2000.⁴¹ Reporting of such statistics would provide greater transparency about aggregate outcomes for self-represented applicants.

6.53 The Tribunals advised that comparative statistics on outcomes for represented and unrepresented cases are expected to be reported in the 2006–07 Annual Report, using data from the new case management system. These statistics could not be readily obtained from records in the previous case management systems of the MRT and the RRT.

Clients with disabilities

6.54 The Tribunals did not publicly report statistical information on clients who informed the Tribunals that they had special needs because of a disability. About 20 per cent of the Australian population had a disability.

6.55 The Tribunals had disability action plans, published in their Annual Reports, which included coverage of services and facilities for these clients. The action plans offered to provide customised assistance to meet needs and provided assurance that the Registries were accessible by disabled persons.

6.56 The action plans mentioned that documentation sent to applicants provided people with disabilities with the opportunity to inform the Tribunals of their special needs. However, Tribunal application forms, most brochures and website material accessible by applicants did not contain this message.⁴² It

⁴¹ Immigration Review Tribunal, *Annual Report 1998–99*, May 2000. The Immigration Review Tribunal reported that decisions favourable to applicants were made in respect of 48 per cent of cases where applicants used advisors and 38 per cent of cases where applicants were unrepresented in 1998–99.

⁴² The RRT brochure, *What is a hearing?*, included brief coverage. It invited people with a physical disability which makes it difficult for them to take public transport or to climb stairs, or have any other specific needs, to contact Registry staff to help them with arrangements for their hearing.

would be appropriate for the Tribunals to highlight in their publications and in application forms that they will attempt to provide various types of specific, appropriate assistance to disabled persons who have special needs.

Complaints handling

6.57 Effective complaints handling enables agencies to identify and deal with client dissatisfaction with services, and to address any underlying systematic problems in service provision.

6.58 The ANAO analysed performance trends in the volume of complaints about Members made to the Tribunals during the period from 2001–02 to 2004–05. The ANAO also examined the RRT’s handling of all complaints finalised in 2003–04 and 2004–05. RRT complaints were twice the volume of MRT complaints in 2004–05.

6.59 The ANAO assessed whether the RRT had issued adequate guidance and kept appropriate records of complaints; maintained reports of complaint investigations and provided adequate reasons for complaint decisions; and finalised cases within a reasonable time. The ANAO also assessed whether lessons learned from complaints handling were effectively disseminated to all Tribunal Members, to promote future service performance improvement.

Tribunal complaints performance

6.60 Each year, the number of complaints about MRT and RRT Members which had been investigated and finalised by the Tribunals was reported in their Annual Reports. The Tribunals’ complaint rate was about 2 complaints per 1000 finalised cases in 2003–04 and 2004–05 (see Table 6.6). The Federal Magistrates Court and the AAT had comparable complaint rates in 2004–05.

The publication did not make clear that Tribunal premises were wheelchair accessible. It also did not refer to available assistance to meet the special needs of people with other disabilities, such as people who are hearing impaired or vision impaired.

Table 6.6**Rate of complaints involving MRT and RRT Members, 2001–02 to 2004–05**

Tribunal	2001–02	2002–03	2003–04	2004–05
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MRT				
Finalised MRT Member complaints	Not published	Not published	13	7
Finalised MRT cases	8583	9714	10022	8308
Ratio of MRT Member complaints per 1000 cases	(a)	(b)	1 per 1000	1 per 1000

RRT				
Finalised RRT Member complaints	18	Not published	11	15
Finalised RRT cases	5865	6251	5810	3033
Ratio of RRT Member complaints per 1000 cases	3 per 1000	(b)	2 per 1000	5 per 1000

Total MRT and RRT				
Finalised MRT/RRT Member complaints	Not published	Not published	24	22
Finalised MRT/RRT cases	14448	15965	15832	11341
Ratio of MRT/RRT Member complaints per 1000 cases	Not known	Not known	2 per 1000	2 per 1000

Notes:

- (a) The MRT reported that complaints were less than 1 per cent of cases finalised in 2001–02 (MRT Annual Report 2001–02).
- (b) The MRT and the RRT both reported that complaints were 'much less' than 1 per cent of cases finalised in 2002–03 (MRT Annual Report 2002–03; RRT Annual Report 2002–03).

Source: ANAO analysis of Tribunal performance information.

6.61 In their 2003–04 and 2004–05 Annual Reports, the Tribunals identified four main reasons for Member complaints:

- the manner in which a hearing was conducted by the Member;
- the conduct of the review process by the Tribunal;
- alleged bias on the part of the Member; and
- delay of Members in finalising case decisions.

6.62 The Tribunals subsequently prepared complaints performance data in a similar format to Table 6.6 for the period after audit fieldwork was completed, and provided the statistics to the ANAO. These showed that there were 3 complaints per 1000 finalised MRT/RRT cases in 2005–06. The MRT had 3 complaints per 1000 cases, while the RRT had 2 complaints per 1000 cases.

Complaints handling guidance, records and information for applicants

6.63 Most of the complaints handled by the Tribunals involve aspects of the Members' conduct of reviews, with the remainder related to Registry services (including interpreter services). Complaints are usually raised by migration agents representing applicants, often after the applicant's hearing has been held and before the Member decides the case. Where a Member is the subject of the complaint, the Principal Member or his delegate usually initiates an investigation which may be carried out by a Senior Member. When the investigation is finalised, the Principal Member advises the complainant of the outcome of the investigation and any action taken.

6.64 RRT processes for dealing with complaints in 2003–04 and 2004–05 were outlined in RRT Practice Directions, issued by the Principal Member in July 2003. These guidelines provided a broad framework for complaints handling. However, they did not specify details of procedures to be followed, and particulars of records to be prepared, in relation to complaints. The issuance of more comprehensive, practical guidance and sample documentation for Tribunal Members would strengthen complaints handling processes.

6.65 The Principal Registry of the Tribunals in Sydney maintained adequate electronic complaints registers for each Tribunal. These registers recorded key case details including the name of the applicant; the name of the Member to which the complaint related; and the nature of the complaint and the outcome.

6.66 The main record of the handling of most complaints was the RRT's written response to the complainant. In most instances, these advice letters did outline the investigation undertaken and the result. The RRT did not prepare a separate summary record of actions taken in the course of complaints handling, for the purposes of recording the nature and extent of the investigation undertaken. The ANAO considered that it would be useful for the Tribunals to have a separate standard summary record of each complaint, because important aspects of complaints investigation by Senior Members in particular might not be included in letters to complainants. These matters could include commentary on the performance of Members, which would be carried forward to their next performance review, and observations arising from complaints which raised broader issues of significance for Tribunal operations and could require further Tribunal management action.

6.67 Some basic information for applicants on complaints handling was included in the Tribunals' service charter, websites and other documentation. Neither of the Tribunals had a separate information sheet describing how applicants may make complaints and how the Tribunal handles complaints.

6.68 The issuance of a separate information sheet for applicants about the Tribunals complaints handling process would have several benefits. It may provide assurance to applicants and their representatives, who might otherwise be reluctant to make a legitimate complaint, that they will not be subjected to discriminatory treatment as a result of their complaint.⁴³ Publishing more information about the Tribunals' complaints investigation processes may also provide assurance about the robustness of investigations.

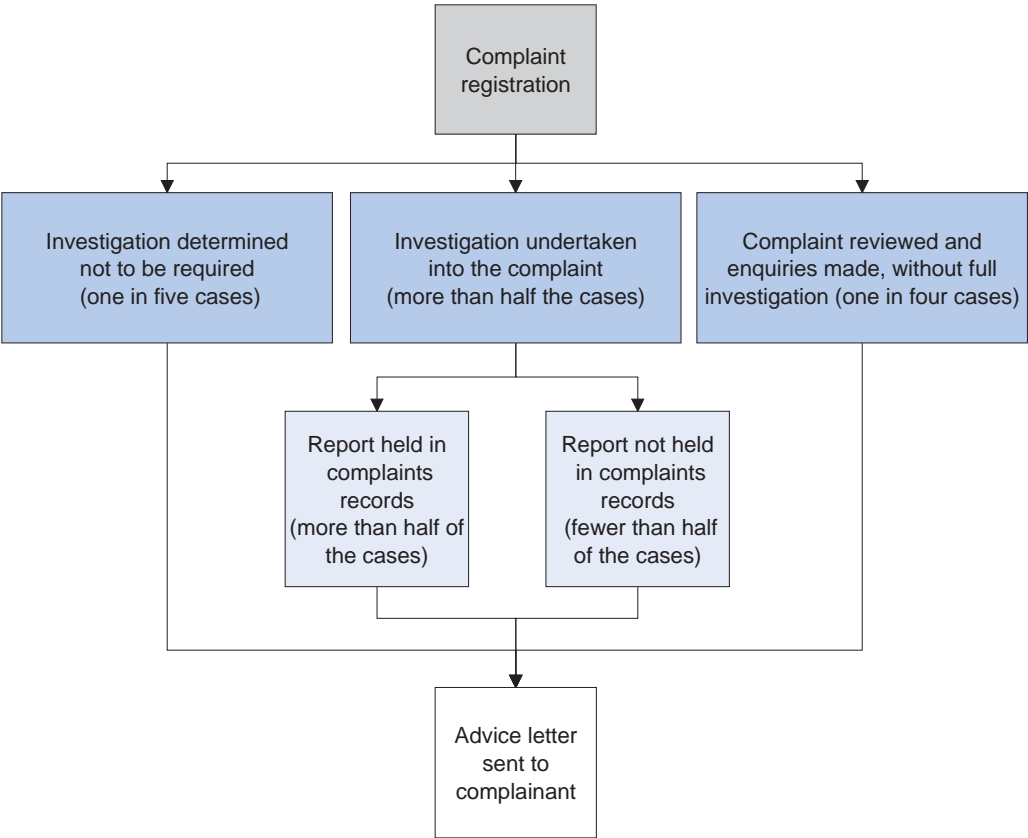
⁴³ The reluctance of some applicants to make complaints for fear of retribution through discriminatory treatment is discussed in Commonwealth Ombudsman's Office, *A Good Practice Guide to Effective Complaint Handling*, 1997, p. 32.

Examination and investigation of complaints

6.69 ANAO review of RRT complaints finalised in 2003–04 and 2004–05 indicated that the RRT dealt with cases in three main ways (see Figure 6.3).

Figure 6.3

RRT complaints handling procedures, 2003–04 and 2004–05



Source: ANAO analysis of RRT complaints handling procedures.

6.70 The ANAO found that about one-fifth of RRT complaints were not investigated, the main reason given to complainants being that their case had been determined and the matter could be pursued through judicial review processes. RRT Practice Directions provided for the Principal Member to decide not to investigate complaints in a range of specified circumstances, including where the complainant has a right of access to judicial review.

6.71 This indicates that this it is in applicants' interests to initiate any complaint about the review process before the Tribunal determines their case. It would be appropriate for the Tribunals to advise applicants of this through relevant information sheets for applicants on Tribunal complaints procedures.

6.72 For about another one-quarter of RRT complaints, the RRT reviewed the matter raised by complainants and made some enquiries, without proceeding to a full investigation. This particular complaint handling process was not provided for in the RRT Practice Directions. The ANAO considered that guidance on appropriate complaints examination processes other than by full investigation, and the circumstances where such processes may be used, would be helpful in maintaining a consistent approach to complaints handling.

6.73 For more than half of RRT complaints, an investigation was conducted into the complaint. Such investigations could include review of the case file by the Senior Member assigned to investigate the case; listening to the audio tape of the hearing; and discussion of the complaint with the Member.

6.74 The ANAO noted a case where the investigating Senior Member found that there was no substance to a complaint, without reviewing the case file, listening to the audio tape or discussing the matter with the Member. The complaint included claims about the manner in which the hearing was conducted and Member bias. The ANAO considered that review of the evidence could have reasonably been expected in such a case.

6.75 The Tribunals noted in relation to this case that the Senior Member who investigated the complaint had stated in his written comments at that time that he did not consider that the applicant was making a complaint that the hearing was conducted unfairly or that the applicant was denied the opportunity to make her case or to respond to adverse information. The Senior Member had also noted that he had not discussed the matter with the Member because a decision had yet to be made on the application and he was reluctant to do anything which could be seen as an interference in the Member's decision-making function (given that the Senior Member did not consider that there was any substance in the complaint).

6.76 Complaints files examined by the ANAO held records of written reports prepared by the Senior Member for fewer than half of these complaints which had been investigated. These reports provided the Tribunals' key record of investigation results, so their retention on complaints files was essential for effective complaints management and record keeping.

6.77 The Tribunals advised the ANAO that they are currently reviewing their complaints handling procedures. ANAO observations on Tribunal complaints handling would be taken into account during this review.

Outcome of investigations

6.78 Complaints were resolved partially or wholly in favour of the complainant in more than one-third of RRT complaint cases in 2003–04 and 2004–05 (see Table 6.7 for examples of remedial action taken by the RRT).

Table 6.7

RRT: examples of remedial actions taken arising from complaints

<p>Remedial action taken by the RRT in particular cases:</p> <ul style="list-style-type: none">• Reallocation of cases to a different Member for consideration and determination.• Invitations to complainants to attend a further hearing.• Priority processing given to a case.• Invitation for a representative to provide further submissions.• Apology for the delay in the finalisation of a case.• Expression of regret that a hearing had caused concerns.
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Source: ANAO review of RRT complaints cases.

6.79 The Tribunals did not include statistics on the outcomes of complaints in their Annual Reports for 2003–04 and 2004–05. However, some information on outcomes was provided in the Tribunals’ joint 2005–06 Annual Report.⁴⁴ Reporting on complaints outcomes contributes to high-quality service provision and effective complaints management and accountability. In particular, it is likely to engender stakeholder confidence that remedies are offered where complaints involving review processes are substantiated.

6.80 In most cases, Tribunal advice letters to complainants provided adequate reasons for the decision taken in relation to the complaint. However, in the cases which were resolved by decisions to re-allocate them to another Member for consideration and determination, the reasons were incomplete. In particular, they did not state whether the substance of complainants’ claims had been upheld. The basis for these omissions appeared to be guidance in the RRT Practice Directions which provided for results of investigations not to be disclosed where it would affect Members’ performance of their statutory duties or otherwise prejudice effective Tribunal operations. However,

⁴⁴ The Tribunals’ joint 2005–06 Annual Report stated that the Principal Member considered that one-third of Tribunal complaints made to him during the year related to matters that could have been handled more appropriately. Information on outcomes for each Tribunal was not provided in the Annual Report.

recognised sound practice in complaints handling is to provide complainants with appropriate, sufficiently detailed reasons for decisions made in relation to complaints. The RRT needs to address this matter so as to be consistent with good practice.

Timeliness of complaints handling

6.81 Timely complaints investigation is crucial, to ensure that client dissatisfaction with services is addressed as quickly as possible. It also ensures that complaints do not unduly delay the finalisation of case decision-making.

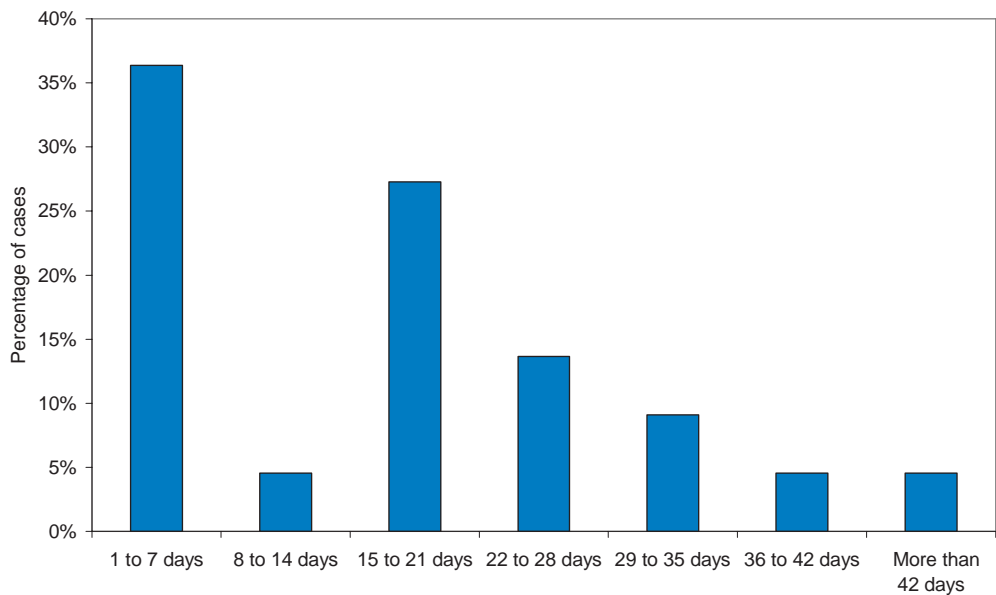
6.82 The RRT did not have a set of time targets for acknowledging the receipt of a complaint, providing a substantive response to the complainant, and providing an interim response advising of the status of the complaint where it will require more time to provide a substantive response. Such time targets would help ensure that complaints handling receives appropriate priority and would assist in identifying delays in complaint finalisation.

6.83 The ANAO found that the average time taken to finalise RRT complaints, from complaint lodgement to dispatch of a written response to the complainant, was 18 days in 2003–04 and 2004–05. Figure 6.4 shows that most complaints were finalised in the first week or the third after their lodgement.

6.84 About one-fifth of RRT complaints took more than 28 days to finalise. The main factor affecting the actioning of these cases was the absence of Tribunal Members on leave. Other factors were the time taken to complete investigations and to prepare letters to complainants. Interim responses were not generally issued for delayed cases. Where a complaint cannot be finalised quickly, recognised sound practice is to keep the complainant informed.

Figure 6.4

Time taken to finalise RRT complaints, 2003–04 and 2004–05



Source: ANAO analysis of 22 RRT complaint cases finalised in 2003–04 and 2004–05.

Dissemination of lessons learned from complaints

6.85 As a result of client complaints and separate judicial scrutiny of review processes, the Tribunals periodically reminded Members of their obligations in dealings with applicants in the conduct of reviews, particularly at hearings. Complainants were also sometimes advised that matters which had been the subject of their complaints would be considered as part of a review of Tribunal practices or covered in Members’ professional development sessions.

6.86 Although feedback from complaints handling and judicial scrutiny was used for service performance improvement, the Tribunals did not have a mechanism for systematically collating lessons learned from complaints and circulating this information to Members. This could be remedied by the regular issue of a digest of the more significant matters raised in complaints.

Assessment of client satisfaction with services

6.87 Client satisfaction is a key measure of service performance for client-orientated agencies. By measuring clients' perceptions of service quality, agencies know whether clients are satisfied with the services they have received, and what improvements clients would like to those services. A range of Australian government agencies conduct surveys to obtain client feedback.⁴⁵

6.88 The Tribunals did not undertake regular surveys of review applicants, migration agents and other representatives, to assess client views of Tribunal service performance. An RRT survey of migration agents had been conducted in 2000–01, but no further surveys had been undertaken.⁴⁶

6.89 The Tribunals' conduct of surveys of clients and their representatives would enable the Tribunals to assess client satisfaction with their overall service performance and with particular services, including the provision of client information to assist applicants through the review process.

6.90 The Tribunals agreed that they should conduct surveys of applicants and migration agents.

Conclusion

6.91 Tribunal client services included the provision of forms and supporting guidance to help applicants and their representatives to lodge review applications; the operation of Registries to process applications and to support the conduct of hearings into review cases; and the availability of complaints handling mechanisms to deal with applicants dissatisfied with service provision. Tribunal service commitments for their range of client services were set out in service charters issued in 2001 and updated in 2006.

6.92 Notwithstanding the considerable changes to Tribunal operations since 2001, the service charters were not reviewed and updated at regular intervals. The Tribunals also did not consult openly with client and community stakeholders in the course of preparing their new joint charter. Periodic future

⁴⁵ These agencies include Centrelink, the Department of Employment and Workplace Relations, and the Australian Taxation Office. The Federal Magistrates Court also periodically conducts surveys of legal practitioners' overall satisfaction with court service, awareness of court services, use of the court website, and views about whether the court is meeting its objective of providing a simpler and quicker forum for resolving disputes. See Federal Magistrates Court, *Annual Report 2004–05*, pp. 43–44.

⁴⁶ The RRT survey of migration agents who used RRT Registries reported a 73 per cent or higher positive rating across all the service items surveyed. An MRT client survey proposed for 2002–03 did not proceed.

review of the charter in consultation with stakeholders would help ensure that it remains relevant to clients.

6.93 The Tribunals promoted the messages of their previous charters to applicants, Members and staff, by a variety of means. However, there would be benefit in the Tribunals pursuing some further means of informing clients about the charter, including mail-outs of a brochure to all applicants and the display of charter signage in client areas of Registries. Increased promotion of the charter would increase awareness of client rights and responsibilities.

6.94 Although the Tribunals were required to report on their service performance against service standards contained in their charters, this had not been done for most service standards in recent Annual Reports. It would be appropriate for the Tribunals to give more attention to performance reporting against client service standards in future Annual Reports. This would help the Tribunals to identify areas of client service in need of improvement, as well as to meet accountability obligations to report against their service standards.

6.95 The Tribunals' new charter covered the key requirements of service charters. However, one service commitment in the new charter which the Tribunals could more effectively implement was the publication of time standards for Tribunal case finalisations in a format which is easier for clients to access and read. This should be addressed as a matter of priority.

6.96 Application forms were used by the Tribunals to obtain the information from applicants needed to process their review cases. The Tribunals had a structured approach to the most recent redesign of MRT forms. However, the inclusion of explanatory guidance on the forms; the closer linkage of form sections and supporting guidance; and further changes to the structure and the format of the forms, would make it easier for applicants to complete the forms.

6.97 The Tribunals' Registries in Sydney and Melbourne provided full Tribunal client services to applicants, while AAT Registries in Brisbane, Adelaide and Perth assisted with the receipt of MRT applications and provided administrative support for Tribunal hearings in those cities. Various services and facilities were provided to clients with particular service needs. In particular, the Tribunals provided interpreter assistance at hearings to applicants who had little or no English language proficiency.

6.98 Tribunal complaints handling mechanisms provided avenues for applicants to raise their dissatisfaction with services, including the conduct of hearings. The issuance of more comprehensive guidance on complaints

handling would make these mechanisms more effective. More systematic feedback to Tribunal Members on the lessons learned from complaints handling would also help them to improve their future service performance.

6.99 Regular surveys of applicants and their representatives were not undertaken by the Tribunals to assess their satisfaction with services and desire for particular service improvements. Client surveys are recognised as being a very useful means of obtaining feedback on service quality issues.

Recommendation No.5

6.100 The ANAO recommends that the Tribunals enhance the quality of services to applicants and their representatives, by:

- committing to regular review of the joint service charter, more widely promoting the charter, and making information about overall time targets for the completion of reviews more accessible to applicants;
- reviewing application forms to improve the quality of guidance to applicants and the user-friendliness of their structure and format;
- issuing more comprehensive guidance on complaints handling and providing Members with more systematic complaints feedback; and
- conducting regular surveys of the satisfaction of applicants and their representatives with Tribunal service performance.

Tribunals' response

6.101 The Tribunals agree with this recommendation.



Ian McPhee
Auditor-General

Canberra ACT
14 June 2007

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