



Immigration and Protection Tribunal

First  
Annual Report  
2010/2011

Judge Hastings

November 2011

## **Introduction**

This is the first annual report of the Immigration and Protection Tribunal. It covers seven months, from 29 November 2010 to 30 June 2011.

The Immigration Act 2009 imposes no reporting requirements on the Immigration and Protection Tribunal. Nevertheless, on 19 April 2011, the Minister of Justice accepted the Chair's offer to provide him, the Minister for Courts, and the Minister of Immigration with an annual report on the Tribunal's activities.

The Immigration and Protection Tribunal is established under section 217 of the Immigration Act 2009. It replaces the Residence Review Board (RRB), the Removal Review Authority (RRA), the Refugee Status Appeals Authority (RSAA) and the Deportation Review Tribunal (DRT), each of which has been disestablished.

This annual report records caseload and decision statistics in each of the Tribunal's four jurisdictional streams (residence, deportation (resident), deportation (non-resident) (formerly referred to as removals), and refugee and protection. It also records these statistics for the Tribunal as a whole.

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

## Functions and Procedures

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

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

The Tribunal may conduct its proceedings in an inquisitorial manner, an adversarial manner, or in a mixed inquisitorial and adversarial manner as it sees fit.

Most of the appeals heard by the Tribunal in its first seven months were inherited from the four legacy bodies. All appeals lodged before 29 November 2009 are determined under the transitional provisions of the 2009 Act. This means that the Tribunal decides transitional appeals applying substantive provisions of the 1987 Act. It also means that deportation (resident) appeals are heard by panels of three.

## Membership

As at 30 June 2011, the Tribunal consisted of the following full-time and part-time members:

Name	Location	Position	Term of Warrant <sup>1</sup>	Membership of legacy bodies at 26 November 2010
Judge W K Hastings	Wellington	Chair	5 years	-
A R Mackey	Auckland	Deputy Chair	2 years	Chair, RSAA
M A Poole	Auckland	Deputy Chair	5 years	Deputy Chair, RRA & RRB
C M Treadwell	Auckland	Deputy Chair	5 years	Deputy Chair, DRT Senior Member, RRB Member, RSAA, RRA
S A Aitchison	Auckland	Member	5 years	Member, RSAA
B L Burson	Auckland	Member	5 years	Member, RSAA
A M Clayton	Masterton	Member	5 years	Senior Member, RRA & RRB Member, DRT
B A Dingle	Auckland	Member	5 years	Member, RSAA
J A Donald	Auckland	Member	5 years	Member, RRA & RRB
P F Fuiava	Auckland	Member	3 years	-
D L Henare	Auckland	Member	5 years	Member, RSAA
A N Molloy	Auckland	Member	3 years	Member, RSAA
L E Moor	Auckland	Member	3 years	-
S M Pearson	Wellington	Member	5 years	Senior Member, RRB Member, RRA
V J Shaw	Kawhia	Member	2 years	Senior Member, RRA
G D S Taylor	Wellington	Member	3 years	-
V J-M Vervoort	Wellington	Member	3 years	Member, RRA & RRB

D J Plunkett of Auckland, former Chair of the RRA, RRB and DRT, resigned as Deputy Chair of the Tribunal on 30 June 2011 to take up appointment as Chair of the Legal Aid Tribunal.

From their membership of the legacy bodies, all but four members of the Tribunal have experience in at least one of the Tribunal's four jurisdictional streams.

<sup>1</sup> The Chair's term began on 15 June 2010. The Deputy Chairs' terms began on 25 October 2010. The Members' terms began on 1 November 2010.

## **Training Programme**

Section 220(1)(b) of the Immigration Act 2009 gives the Chair responsibility for directing the education, training, and professional development of members of the Tribunal. It is intended that all members will receive training in each of the Tribunal's jurisdictional streams within the first two years of the Tribunal's existence. This is intended to give the Tribunal greater flexibility to manage changing patterns of appeals efficiently, and will give members greater opportunity for personal professional development.

Members attended in-house seminars on the Immigration Act 2009 and complementary protection in November 2010, residence and refugee and protection in December 2010, residence in February 2011, decision-writing in April 2011, and deportation (resident) in May 2011. The Chair and Deputy Chair Poole attended the Australasian Institute of Judicial Administration conference in Melbourne in June 2011.

## **Performance Management**

A performance management system was trialled in the final quarter of the 2010/11 financial year. The purpose of the performance management system is to enhance personal and organisational performance and the achievement of personal and organisational goals by systematically identifying expected work performance, evaluating actual work performance, encouraging personal development, and recognising personal achievement. Each member's expected output is determined by taking into account overall Tribunal caseload, the distribution of that caseload across each jurisdiction, the individual member's competence in relevant jurisdictions and his or her personal development and training needs. Those members new to a jurisdiction receive in-house training and are not expected to produce as many decisions as more experienced members. In the first two years of the Tribunal's operation, it is expected that considerable time and resources will be spent getting members up to speed in new jurisdictions.

## Core Documents

The Tribunal created the following documents in its establishment year:

- *Practice Note 1/2010 (Deportation)*
- *Practice Note 2/2010 (Refugee and Protection)*

Section 220(2)(a) of the Immigration Act 2009 gives the Chair a discretion to issue practice notes for the purposes of regulating the Tribunal's practice and procedure. Both Practice Notes were issued in time for the Tribunal's commencement on 29 November 2010 and are published on the Tribunal's website maintained by the Ministry of Justice: <http://www.justice.govt.nz/tribunals/immigration-protection-tribunal>.

- *Code of Conduct*

Section 220(2)(b) of the Immigration Act 2009 gives the Chair a discretion to develop a code of conduct for Members of the Tribunal. The Code of Conduct gives members practical advice on the maintenance of their, and the Tribunal's, independence, impartiality and integrity. It is intended to promote the good reputation of the Tribunal and its members. Section 220(1)(c) makes the Chair responsible for dealing with complaints made about members of the Tribunal. The Code of Conduct provides a means of dealing with any such complaints.

- *Code of Ethics for Interpreters*

The Code of Ethics for Interpreters is intended to ensure that communication across language and cultural barriers is carried out in a competent and impartial manner, and that all those involved in the process are clear about what is expected of them. All interpreters are required to acknowledge receipt of the Code of Ethics and to declare they will comply with it.

- *Peer Review Protocol*

Section 221 of the Immigration Act 2009 provides that in most cases the Tribunal consists of one member. The Peer Review Protocol is intended to ensure that the Tribunal publishes decisions which are correct, persuasive and consistent. A review of a draft decision by another member in a collegial manner can promote these aims. All draft decisions are submitted for peer review. Although the reviewers do not have the authority to direct a particular outcome, the process ensures consistent jurisprudence and form.

- *Publication Protocol*

Clause 19 of the Second Schedule of the Immigration Act 2009 requires the Tribunal to publish its decisions, with some exceptions. Decisions on refugee and

protection appeals must be edited to remove anything likely to lead to the identification of the appellant or affected person. In some cases, this may require prohibition of the publication of the whole decision. Decisions must also be edited to protect classified information. Other decisions may be edited to remove passages which, for example, could identify victims or children. The Publication Protocol establishes a Publication Committee and a procedure by which the statutory provisions relating to publication are implemented.

- *Chambers Book*

Work on a Chambers Book was completed by 30 June 2011 and was issued to Members in July 2011. The Chambers Book provides members with practical information that includes our relationship with the Ministry of Justice, health and safety, the conduct of hearings and decisions on the papers. It also brings together the core documents described above.

## Agreements with Other Agencies

The Tribunal contributed to the creation of, or became a party to, the following agreements in its establishment year:

- *Memorandum of Understanding between the Ministry of Justice and the Department of Labour in regard to the Immigration and Protection Tribunal, 31 March 2011*

The Ministry of Justice has statutory responsibility for the administration of the Tribunal, the Immigration and Protection Tribunal Regulations 2010 and the Immigration and Protection Tribunal (Transitional Provisions) Regulations 2010. The Department of Labour has responsibility for the administration and enforcement of the Immigration Act 2009 and all other associated regulations. This MOU sets out how this divided responsibility will be practically implemented so that the Tribunal operates as smoothly as possible.

- *Memorandum of Understanding between the Ministry of Justice and the New Zealand Police, 15 March 2011*

This MOU specifies the conditions under which the Tribunal may obtain vetting services from the New Zealand Police. Vetting services offered by the New Zealand Police establish whether or not an appellant has a clean police record.

- *Protocol between the Attorney-General and the Chair of the Immigration and Protection Tribunal pursuant to Section 260(1)(a) of the Immigration Act 2009 for dealing with Classified Information, 29 November 2010*

Section 260(1)(a) of the Immigration Act 2009 requires that practices and procedures to ensure the protection of classified information must be agreed between the Chair and the Attorney-General with respect to proceedings involving classified information heard by the Tribunal. This Protocol records that agreement. A similar protocol was agreed between the Chief Justice and the Attorney-General with respect to all other proceedings.

- *Memorandum of Understanding between the Solicitor-General, the Chair of the Immigration and Protection Tribunal, and the Department of Labour*

This MOU is intended to ensure that any Court that hears proceedings against the Tribunal or one of its decisions is fully informed about the relevant facts and law. This MOU will facilitate the exchange of information for that purpose between the Tribunal and the Department of Labour or Crown Law. Its negotiation had not been completed by 30 June 2011.



## **Judicial Reviews**

The quality of the Tribunal's decisions can be ascertained by the number of its decisions that are successfully judicially reviewed. In the seven months to 30 June 2011, applications were lodged in the High Court to review five (or 1.4 percent) of the Tribunal's 350 decisions. Three applicants sought judicial review of decisions in which the Tribunal declined to quash orders made by the Minister of Immigration to deport residents convicted of crimes. One has been discontinued, one is pending, and one (or 0.3 percent) was set aside by consent and remitted back to the Tribunal. The remaining two applications for judicial review concerned a residence decision and a deportation (non-resident) decision. Both of these applications are pending.

## Actual v Predicted Decision Output

Based on trends over time in the caseload of the four predecessor bodies, in 2010 the Ministry of Justice calculated the expected caseload of the Immigration and Protection Tribunal and resourced it accordingly. The following chart compares these projections against the Tribunal's actual caseload to 30 June 2011.

<b>Jurisdiction</b>	<b>Appeals inherited</b>		<b>New Appeals since 29.11.10</b>		<b>Actual Caseload</b>	<b>MoJ Predicted Caseload</b>
Residence	291	+	330	=	621	400
Deportation (non-resident)	83	+	195	=	278	302
Deportation (resident)	80	+	7	=	87	76
Refugee and Protection	70	+	109	=	179	240
<b>IPT Total</b>	<b>524</b>	<b>+</b>	<b>641</b>	<b>=</b>	<b>1165</b>	<b>1018</b>

The Tribunal's caseload for its first seven months was 14 percent higher than predicted. There were 55 percent more residence appeals than predicted, and these constituted 53 percent of the Tribunal's actual caseload to 30 June 2011.

## Timeliness

The following chart shows the average length of time it took the Tribunal to issue decisions in each jurisdiction, calculated from the date an appeal was received to the date a decision was released.

<i>Jurisdiction</i>	<i>Number of days from receipt of appeal to release of decision</i>
Residence	301
Deportation (non-resident)	183
Deportation (resident)	283
Refugee and Protection	<u>196</u>
IPT Average	280

The time taken to process deportation (resident) appeals is, to some extent, determined by factors beyond the Tribunal's control. Applications to quash deportation orders made against residents are generally made while the applicant is serving a sentence of imprisonment. Section 236(1) of the Immigration Act 2009 requires the Tribunal to consider and determine such appeals as close as practicable to the date of the person's parole eligibility date or statutory release date. In some cases, this could be years after a person has become liable for deportation. If the average time taken to determine deportation (resident) appeals is removed from the chart, the IPT average falls to 253 days.

## Caseload and Decision Statistics

The following charts show caseload and decision statistics for each of the seven months to 30 June 2011.

Chart A.1 shows that the Tribunal started life with 524 appeals inherited from the four predecessor bodies. In seven months it received 641 new appeals, released 350 decisions, and ended the financial year with 660 appeals on hand. 155 appeals were withdrawn, out of time, or invalid. Chart A.2 shows that 209 (or 60 percent) of these decisions dismissed appeals, and 141 (or 40 percent) of these decisions either allowed appeals or referred them to the Minister. The chart also shows that the Tribunal held 107 hearings. Chart A.3 shows these statistics in graph form.

Chart B.1 shows that the Tribunal inherited 291 residence appeals, received 330 new residence appeals, issued 189 residence decisions, and ended the year with 392 residence appeals on hand. Forty appeals were withdrawn, out of time, or invalid. Chart B.2 shows that 102 (or 54 percent) of these decisions dismissed appeals, 52 (or 28 percent) of these decisions allowed appeals, and 35 (or 19 percent) of these decisions referred the appeals to the Minister. All residence decisions are decided on the papers. Chart B.3 shows these statistics in graph form.

Chart C.1 shows that the Tribunal inherited 80 deportation (resident) appeals, received 7 new deportation (resident) appeals, issued 21 deportation (resident) decisions, and ended the year with 55 deportation (resident) appeals on hand. Eleven appeals were withdrawn or invalid. This is the only jurisdiction in which the Tribunal reduced the backlog. Chart C.2 shows that 12 (or 57 percent) of these decisions dismissed appeals, and 9 (or 43 percent) of these decisions allowed appeals. 23 deportation (resident) hearings were held. Chart C.3 shows these statistics in graph form.

Chart D.1 shows that the Tribunal inherited 83 deportation (non-resident) appeals, received 195 new deportation (non-resident) appeals, issued 78 deportation (non-resident) decisions, and ended the year with 109 deportation (non-resident) appeals on hand. 91 appeals were withdrawn, out of time, or invalid. Chart D.2 shows that 60 (or 77 percent) of these decisions dismissed appeals, and 18 (or 23 percent) of these decisions allowed appeals. All deportation (non-resident) decisions were decided on the papers. Chart D.3 shows these statistics in graph form.

Chart E.1 shows that the Tribunal inherited 70 refugee appeals, received 109 new refugee and protection appeals, issued 62 refugee and protection decisions, and ended the year with 104 refugee and protection appeals on hand. Refugee and protection decision production was delayed because existing appellants were given time to elect whether they wanted to add claims for complementary protection under the International Covenant for Civil and Political Rights or the Convention Against Torture to their appeals before the Tribunal, or to ask a refugee and protection officer to determine such claims at first instance. Chart E.2 shows that 35 (or 57 percent) of these decisions dismissed appeals, and 27 (or 43 percent)

of these decisions allowed appeals. 84 refugee and protection hearings were held. Chart C.3 shows these statistics in graph form.

Much of the information produced by the Ministry of Justice's Tribunal Case Management system, or TCM, had to be manually verified to produce these statistics. The system is unable to provide a breakdown of countries from which appellants come, but we understand that the Ministry has taken steps to improve the system and train staff in its use so that statistics will be more easily and efficiently produced next year.

**ALL APPEALS**  
from December 2010 to 30 June 2011

**Chart A.1**

**Total IPT Appeals on Hand**

Month	Appeals on hand at start of month	New appeals	Withdrawn or invalid	Decisions released	Appeals finalised	Appeals on hand at end of month
Dec	524	69	46	21	67	526
Jan	526	56	9	17	26	556
Feb	556	83	18	47	65	574
Mar	574	108	24	59	83	599
Apr	599	95	19	40	59	635
May	635	114	20	71	91	658
Jun	658	116	19	95	114	660
	<b>YTD totals</b>	<b>641</b>	<b>155</b>	<b>350</b>	<b>505</b>	

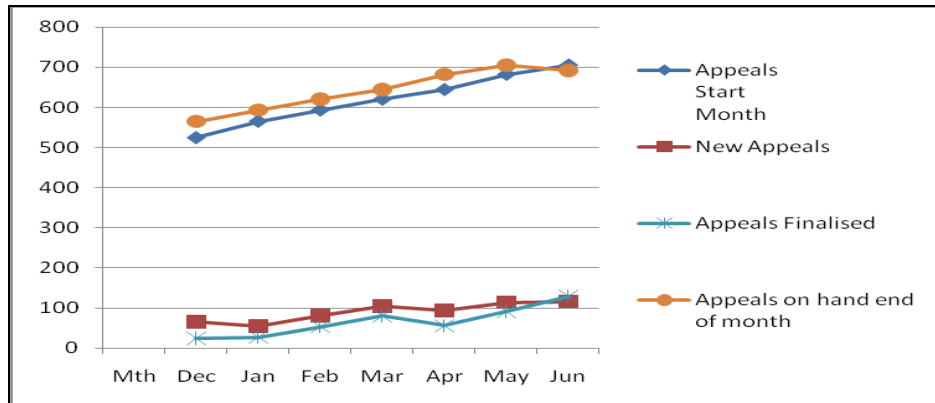
**Chart A.2**

**Total IPT Decisions Released**

Month	Hearings	Dismissed	Allowed or referred to Minister	Total
Dec	8	13	8	21
Jan	3	14	3	17
Feb	18	28	19	47
Mar	15	42	17	59
Apr	12	21	19	40
May	19	44	27	71
Jun	32	47	48	95
	<b>YTD totals</b>	<b>107</b>	<b>209</b>	<b>350</b>

**Chart A.3**

**Total IPT Caseflow**



## RESIDENCE APPEALS from December 2010 to 30 June 2011

**Chart B.1**

### Residence Appeals on Hand

Month	Appeals on hand at start of month	New appeals	Withdrawn or invalid	Decisions released	Appeals finalised	Appeals on hand at end of month
Dec	291	32	14	12	26	297
Jan	297	35	3	16	19	313
Feb	313	36	0	27	27	322
Mar	322	51	7	31	38	335
Apr	335	48	7	25	32	351
May	351	63	4	43	47	367
Jun	367	65	5	35	40	392
	<b>YTD totals</b>	<b>330</b>	<b>40</b>	<b>189</b>	<b>229</b>	

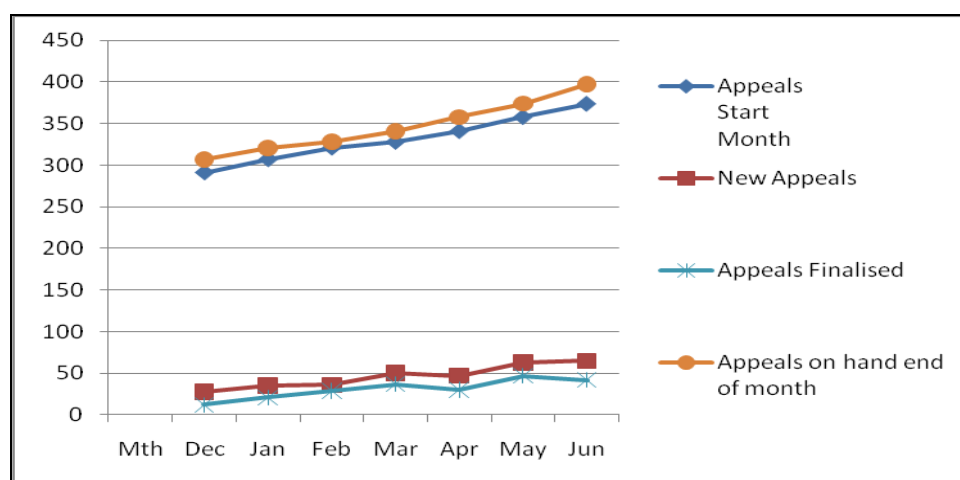
**Chart B.2**

### Residence Decisions Released

Month	Dismissed	Allowed	Referred to Minister	Total
Dec	8	3	1	12
Jan	13	2	1	16
Feb	13	8	6	27
Mar	18	8	5	31
Apr	12	9	4	25
May	21	8	14	43
Jun	17	14	4	35
	<b>YTD totals</b>	<b>102</b>	<b>52</b>	<b>189</b>

**Chart B.3**

### Residence Caseflow



**DEPORTATION (RESIDENT) APPEALS**  
from December 2010 to 30 June 2011

**Chart C.1**

**Deportation (Resident) Appeals on Hand**

Month	Appeals on hand at start of month	New appeals	Withdrawn or invalid	Decisions released	Appeals finalised	Appeals on hand at end of month
Dec	80	1	1	0	0	80
Jan	80	2	0	1	1	81
Feb	81	0	3	5	8	73
Mar	73	4	0	2	2	75
Apr	75	0	7	3	10	65
May	65	0	0	5	5	60
Jun	60	0	0	5	5	55
	<b>YTD totals</b>	<b>7</b>	<b>11</b>	<b>21</b>	<b>32</b>	

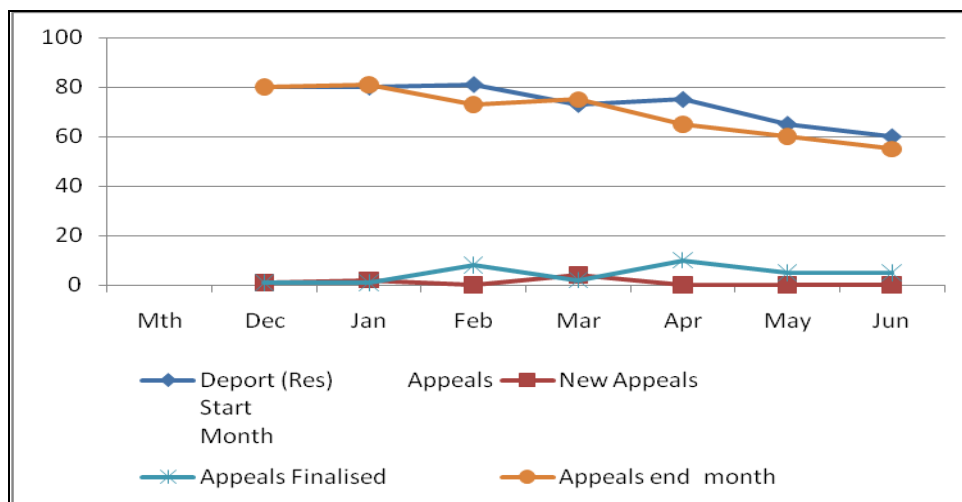
**Chart C.2**

**Deportation (Resident) Decisions Released**

Month	Hearings	Dismissed	Allowed	Total
Dec	5	0	0	0
Jan	3	1	0	1
Feb	7	3	2	5
Mar	1	2	0	2
Apr	1	1	2	3
May	1	2	3	5
Jun	5	3	2	5
	<b>YTD totals</b>	<b>23</b>	<b>12</b>	<b>9</b>

**Chart C.3**

**Deportation (Resident) Caseflow**





**DEPORTATION (NON-RESIDENT) APPEALS**  
from December 2010 to 30 June 2011

**Chart D.1**

**Deportation (Non-Resident) Appeals on Hand**

Month	Appeals on hand at start of month	New appeals	Withdrawn or invalid	Decisions released	Appeals finalised	Appeals on hand at end of month
Dec	83	21	27	8	35	69
Jan	69	11	5	0	5	75
Feb	75	30	14	14	28	77
Mar	77	30	12	14	25	82
Apr	82	31	5	9	14	99
May	99	38	15	15	30	107
Jun	107	34	14	18	32	109
	<b>YTD totals</b>	<b>195</b>	<b>91</b>	<b>78</b>	<b>180</b>	

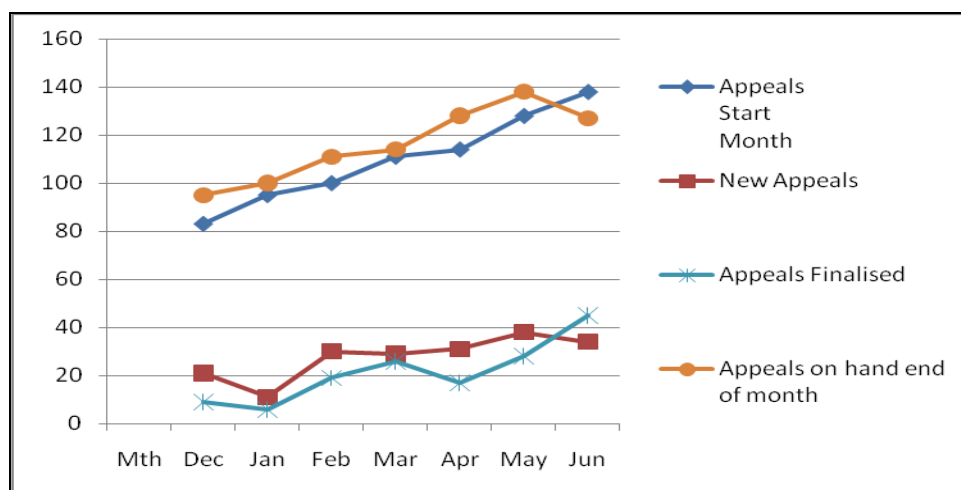
**Chart D.2**

**Deportation (Non-Resident) Decisions Released**

Month	Dismissed	Allowed	Total
Dec	4	4	8
Jan	0	0	0
Feb	11	3	14
Mar	13	1	14
Apr	7	2	9
May	14	1	15
Jun	11	7	18
	<b>YTD totals</b>	<b>60</b>	<b>78</b>

**Chart D.3**

**Deportation (Non-Resident) Caseflow**



**REFUGEE AND PROTECTION APPEALS**  
from December 2010 to 30 June 2011

**Chart E.1**

**Refugee and Protection Appeals on Hand**

Month	Appeals on hand at start of month	New appeals	Withdrawn or invalid	Decisions released	Appeals finalised	Appeals on hand at end of month
Dec	70	15	4	1	5	80
Jan	80	8	1	0	1	87
Feb	87	17	1	1	2	102
Mar	102	23	6	12	18	107
Apr	107	16	0	3	3	120
May	120	13	1	8	9	124
Jun	124	17	0	37	37	104
	<b>YTD totals</b>	<b>109</b>	<b>13</b>	<b>62</b>	<b>75</b>	

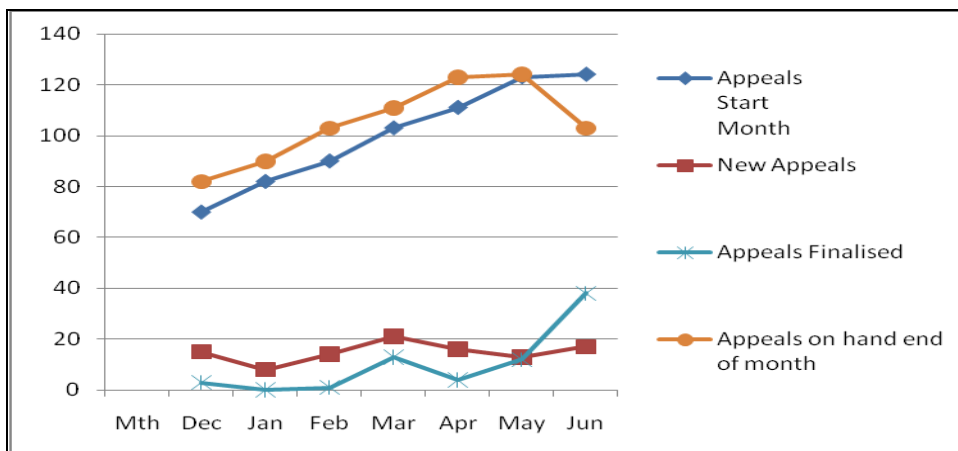
**Chart E.2**

**Refugee and Protection Decisions Released**

Month	Hearings	Dismissed	Allowed	Total
Dec	3	1	0	1
Jan	0	0	0	0
Feb	11	1	0	1
Mar	14	9	3	12
Apr	11	1	2	3
May	18	7	1	8
Jun	27	16	21	37
	<b>YTD totals</b>	<b>84</b>	<b>35</b>	<b>62</b>

**Chart E.3**

**Refugee and Protection Caseflow**



## Acknowledgements

I am grateful for the assistance of Wayne Newall, Karen Eriksen, Heather Baggott, Liz Sinclair and their teams at the Ministry of Justice, and George Mason and his team at the Department of Labour, for their singular contribution in establishing the systems that enabled the Tribunal to hit the ground running on 29 November 2010. I express my gratitude to the Chief Justice who agreed to swear us in *en masse*. The Ministry of Justice staff associated with the Tribunal have impressed me with their conscientious dedication to making the Tribunal work well and in this respect I owe Jessie Henderson, our Operations Manager, my Auckland Assistant, Sharon Salmon, my Wellington Assistants, Ange Williams and Michelle Williams, special thanks. The organisational skills of Clare O'Brien, the Wellington District Court Judicial Resource Manager, and Sherryl Osborne, my personal assistant at the Wellington District Court, have made holding down two jobs much more pleasant than it might have been. I am grateful too for the support, counsel and sheer hard graft of the four foundation Deputy Chairs, Allan Mackey, Dave Plunkett, Martin Treadwell and Melissa Poole in the days before 29 November 2010, and in the seven months since. Finally, I record my appreciation to the members of the Tribunal without whose dedication and professionalism the Tribunal would not have been as successful as it was in its first seven months of operation.

W K Hastings  
District Court Judge  
Chair, Immigration and Protection Tribunal

## Statement of Intent for the 2011/12 Financial Year

In July 2011, all members of the Tribunal met to take stock of our first seven months, and to develop a realistic plan to maximise the quality, quantity and timeliness of our decisions within the parameters of the environment in which we operate. What follows is an abridged version of the outcome of that meeting. Its focus is on what the judicial side can do to maximise high quality and timely decision production. It comments on administration only when administrative practice affects decision production. It is intended to demonstrate accountability for the expenditure of taxpayers' funds on the judiciary, and is given to Ministers as a courtesy.

### Our Vision

*The Immigration and Protection Tribunal will be performing at its full potential when it balances the national interest and the rights of individuals by producing and publishing all of its decisions in a high quality and timely manner.*

The purpose of the Immigration Act 2009 is to manage immigration in a way that balances the national interest and the rights of individuals. The Immigration and Protection Tribunal is one of the mechanisms the Act establishes to manage immigration. Hence reference is made to balancing the national interest and the rights of individuals.

“Producing” decisions includes considering files, conducting hearings and writing decisions that resolve issues in a fair, impartial, lawful and humane manner. “Publishing” decisions includes making our decisions accessible and understandable to the parties, the profession, researchers, appellate courts, the executive, the public, and being accountable for our decisions in various public, professional and stakeholder forums.

“Decisions” are more than declarations of “appeal allowed” or “appeal dismissed”. They include findings of fact, accurate statements of law, the application of relevant law and logical and compelling reasoning. Use of the word “all” is meant to encompass the resolution of new appeals and a reduction of the backlog of cases waiting to be heard. “High quality” decisions are those that are correct, well-reasoned and that preserve and build on the jurisprudence of the legacy tribunals. They are also accessible decisions that clearly and concisely resolve the issues. Finally, decisions must be produced in a “timely manner” because justice delayed is justice denied. With respect to matters within our control, we owe appellants an obligation to resolve their appeals quickly, and with good reasons.

To achieve this vision, the Tribunal must harness its resources prudently and efficiently within a reasonably fixed environment.

## The Environment in which We Operate

There are three principal environmental factors that are likely to affect decision production in the coming years.

First, the Ministry of Justice predicts 1181 new cases in 2011/12, a 16 percent increase over the 2010/11 prediction of 1018, which itself was 13 percent too low. Experience shows that the mere creation of a one-stop shop that amalgamates tribunals increases the caseload of the new tribunal beyond the aggregate of the previous bodies' caseloads. The Department of Labour's predictions are significantly lower than those of the Ministry of Justice. To process 1181 appeals requires the production of 91 decisions per equivalent full-time member per year, or one decision per equivalent full-time member every 2.4 working days, not allowing for time taken for training, management, governance and other duties, and not decreasing the backlog.

Second, the experience and competence requirements in the Legal Services (Quality Assurance) Regulations 2011<sup>2</sup> are likely to decrease the number of counsel able to appear before the Tribunal, thereby adversely affecting scheduling of hearings.

Third, clause 17 of the Second Schedule of the Immigration Act 2009 requires all decisions of the Tribunal to be in writing. A speedier, more summary, process is not legally possible, nor is it desirable given the review and appellate nature of a substantial proportion of the Tribunal's work.

## Our Resources

### *Judicial membership*

The Tribunal consists of its members, all of whom are warranted, independent judicial officers who are responsible for their own performance. Members "own" the Tribunal, can be expected to share responsibility for its performance, and can be expected to have a say in how that performance is achieved.

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<sup>2</sup> **12 Refugee and immigration**

For any refugee or immigration proceedings, the applicant must have—

- (a) at least 18 months' recent experience working on refugee and protected persons cases; and
- (b) had substantial and active involvement in at least 5 cases at the Refugee Status Branch level; and
- (c) actively participated in at least 1 proceeding before the Immigration Protection Tribunal, the Deportation Review Tribunal, the Refugee Status Appeal Authority, or the Removal Review Authority.

- Numbers:** An establishment quota of a Chair plus 14 equivalent full-time members (currently 16 actual people or 13 equivalent full-time members) was based on the legacy tribunals' handling of caseload. The Tribunal's higher than predicted actual caseload exceeded the decision-production capacity of the establishment quota of judicial officers, which has resulted in a growing backlog.
- Location:** There are four members in Wellington, one in Masterton, one in Kawhia, and 11 in Auckland. Widely dispersed membership requires that more resources are devoted to training and the promotion of collegiality.
- Terms:** The Governor-General, on the advice of the Minister of Justice, issued each member with a 2, 3 or 5 year warrant to stagger the reappointment/appointment process. This means an almost continuous appointment/reappointment process interrupted every three years by the convention that no significant appointments are made three months before a general election.
- Chair:** A Wellington-based Chair was simultaneously appointed as Chair and as a District Court Judge who sits in Wellington District Court for 12 weeks each year.
- Functions:** The Chair's commitments and deputies' management functions, commitment of time from experienced members to training, education and mentoring, commitment of time from less experienced members to learning, commitment of time from all members to external continuing education and conferences, mentoring and peer review, are all necessary to the proper functioning of the Tribunal, but take resources away from our decision-writing capacity.

### ***Staff support***

The Ministry of Justice is responsible for supporting the Tribunal so that it can do what Parliament has created it to do. The Ministry currently employs a "shared services" model that is intended to allocate support resources more efficiently across the 26 or so specialist tribunals, including the Immigration and Protection Tribunal.

### ***Premises***

The shift to new premises at Gen-i is delayed. The Ministry of Justice will have to negotiate an extension to the term of the lease at BDO which expires in April 2012. The shift is unlikely to take place in this financial year.

## The Plan

What follows is a plan to achieve our vision that seeks to marshal these resources within the environmental constraints discussed above.

1. ***Peer review***  
To ensure the quality of decisions remains high, all decisions will continue to be peer reviewed.
2. ***Performance management***  
To ensure decision output remains efficient, and to give members greater opportunity for personal professional development, the performance management system will remain in place.
3. ***Training programme***  
To give the Tribunal greater flexibility to manage changing patterns of appeals efficiently, and to give members greater opportunity for personal professional development, it is intended that all members will receive training in each of the Tribunal's jurisdictional streams within the first two years of the Tribunal's existence. This training includes substantive legal education as well as court craft skills best obtained by participation alongside experienced members in hearings. Working with the Ministry of Justice to establish a budget to facilitate attendance at international conferences in the coming years will ensure that members of the Tribunal maintain their expertise in international law and that the Tribunal preserves its good reputation in international circles.
4. ***Judicial management structure***  
To maximise decision production, a leaner judicial management structure is desirable. Although four Deputy Chairs were initially needed to transfer knowledge from the four legacy bodies to the Tribunal, the structure was top heavy and took capacity away from decision production. To remedy this, the responsibilities of the four foundation Deputy Chairs were reallocated to two Deputy Chairs. The new structure will be monitored in the coming year.
5. ***Judicial resourcing***  
To maximise decision production, more judicial resource is needed. The Tribunal's caseload is higher than predicted, which has resulted in an increasing backlog. One new member, M B Martin, has been appointed for three years, and advertising for two more new members is underway. Two Deputy Chairs<sup>3</sup> will be replaced by three members, effectively increasing decision-production capacity from one to three equivalent full-time decision-writers. As the first warrant expiry is less than a year away, consideration must also be given to how the reappointment/appointment process will be managed.

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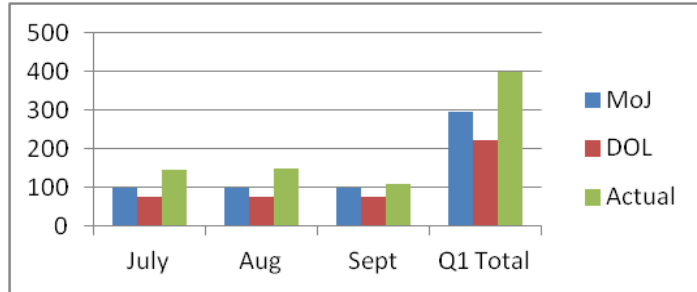
<sup>3</sup> D J Plunkett, who resigned on 30 June 2011 to take up appointment as Chair of the Legal Aid Tribunal, and A R Mackey, who retired on 30 September 2011.

- 6. *Collegiality***  
To promote collegiality amongst widely-distributed members, the Tribunal will hold regular all-members’ meetings to coincide with training sessions.
- 7. *Staff support***  
To ensure staff support is matched to the needs of the judiciary, the “shared services” model has been modified to give the Tribunal’s Operations Manager much greater influence over decisions that affect how IPT-located staff are deployed. The Chair will continue to work with the Operations Manager to ensure that the model works to maximise high quality and timely decision production.
- 8. *Premises***  
To ensure our new premises suit our needs, the Chair will continue to be engaged in consultations with the other judicial bodies in the Gen-i Building and the Ministry of Justice.
- 9. *Reporting***  
To secure more accurate predictions of caseload, the Tribunal will track actual caseload against both Ministry of Justice and Department of Labour predictions this year.

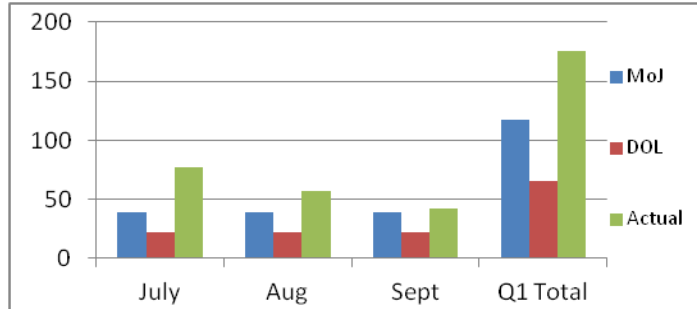


## Caseload Statistics to 30 September 2011

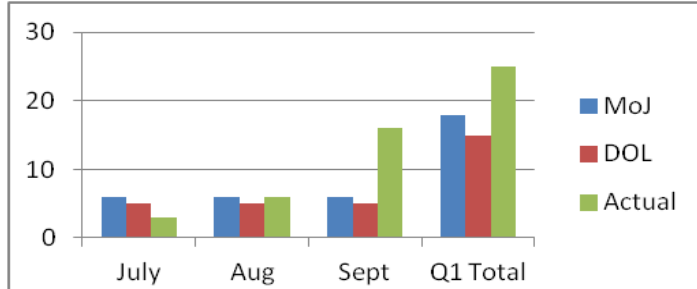
IPT ALL APPEALS			
Month	MoJ	DOL	Actual
July	98	74	144
Aug	98	74	147
Sept	98	74	108
<b>Q1 Total</b>	<b>294</b>	<b>222</b>	<b>399</b>



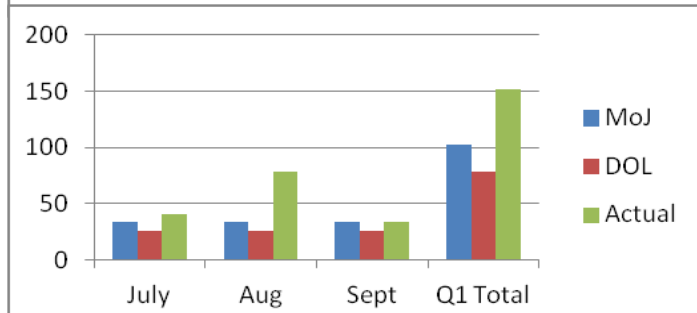
RESIDENCE			
Month	MoJ	DOL	Actual
July	39	22	77
Aug	39	22	57
Sept	39	22	42
<b>Q1 Total</b>	<b>117</b>	<b>66</b>	<b>176</b>



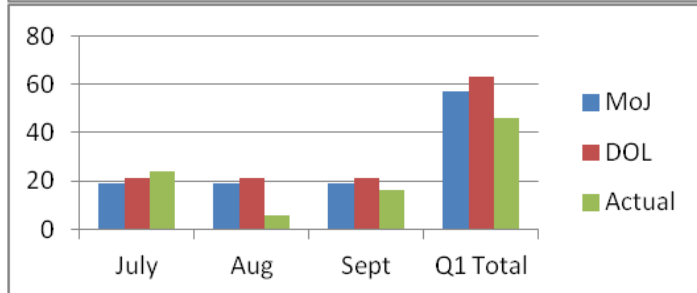
DEPORTATION (RESIDENT)			
Month	MoJ	DOL	Actual
July	6	5	3
Aug	6	5	6
Sept	6	5	16
<b>Q1 Total</b>	<b>18</b>	<b>15</b>	<b>25</b>



DEPORTATION (NON-RESIDENT)			
Month	MoJ	DOL	Actual
July	34	26	40
Aug	34	26	78
Sept	34	26	34
<b>Q1 Total</b>	<b>102</b>	<b>78</b>	<b>152</b>



REFUGEE & PROTECTION			
Month	MoJ	DOL	Actual
July	19	21	24
Aug	19	21	6
Sept	19	21	16
<b>Q1 Total</b>	<b>57</b>	<b>63</b>	<b>46</b>



So far, Ministry of Justice predictions are closer to actual caseload than the Department of Labour's. In all jurisdictions except refugee and protection, actual caseload is well above the highest prediction. Residence appeals continue to drive caseload.

Caseload and decision statistics will be provided to Ministers in a six-monthly update.