

The cover features a white background with a large grey rectangle on the right side. On the left, there are vertical bands of halftone patterns: a dark grey one at the top and a green one at the bottom. A white arrow points from the left edge of the grey rectangle towards the text.

# MIGRATION REVIEW TRIBUNAL REFUGEE REVIEW TRIBUNAL **ANNUAL REPORT 2010–11**

TO PROVIDE VISA APPLICANTS AND SPONSORS WITH INDEPENDENT, FAIR, JUST,  
ECONOMICAL, INFORMAL AND QUICK REVIEWS OF MIGRATION AND REFUGEE DECISIONS

# Migration Review Tribunal and Refugee Review Tribunal Annual Report 2010–11

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and the Refugee Review Tribunal

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Australian Government

Migration Review Tribunal · Refugee Review Tribunal

30 September 2011

The Hon Chris Bowen MP  
Minister for Immigration and Citizenship  
Parliament House  
CANBERRA ACT 2600

Dear Minister

I have pleasure in presenting to you this Annual Report on the operations of the Migration Review Tribunal and the Refugee Review Tribunal (the tribunals) for the year ending 30 June 2011.

The Report has been prepared in accordance with the *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act bodies*, which was approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999* (updated by the Department of the Prime Minister and Cabinet on 8 July 2011).

The report includes the tribunals' audited financial statements as required by section 57 of the *Financial Management and Accountability Act 1997*.

In addition, and as required by the Commonwealth Fraud Control Guidelines, I certify that I am satisfied that for the financial year 2010-11, the tribunals have had appropriate fraud control mechanisms that meet the tribunals' needs and that comply with the guidelines applying in 2010-11.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Denis O'Brien', written over a light blue horizontal line.

Denis O'Brien  
Principal Member

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# THE TRIBUNALS AT A GLANCE

The Migration Review Tribunal (the MRT) and the Refugee Review Tribunal (the RRT) are established under the *Migration Act 1958* (Migration Act). The tribunals' jurisdictions, powers and procedures are set out in the Migration Act and in the Migration Regulations 1994.

**Principal Member** Denis O'Brien

**Registrar** Colin Plowman

Unless otherwise indicated, all information as at 30 June 2011 for the 2010–11 financial year.

	MRT	RRT	MRT and RRT
Established	1999	1993	
Cases lodged	10,315	2,966	13,281
Cases on hand 1 July 2010	7,048	738	7,786
Cases decided	6,577	2,604	9,181
Cases on hand 30 June 2011	10,786	1,100	11,886
% of primary decisions set aside	41%	24%	37%
% of primary decisions affirmed	36%	70%	45%
% of cases withdrawn or otherwise resolved	23%	6%	18%
Average time taken to decide a case (weeks)	42	14	
% of decided cases where applicant represented	65%	53%	61%
Hearings arranged	5,137	3,632	8,769
% of decided cases where hearing held	53%	74%	59%
% of hearings where interpreter was required	64%	84%	72%
Languages and dialects			89
% of decisions taken to judicial review	4%	20%	
Decisions set aside on judicial review as % of MRT/RRT decisions made	0.3%	1.1%	

MRT and RRT	
Members	89*
Staff	284
Cost	\$45.5m

\* Includes 1 full-time Senior Member and 2 full-time members on leave of absence to the Independent Protection Assessment Office (IPA0), and 5 part-time members working on IPA0 matters.

### Statistics

All statistics used in this report are of 'cases'. Multiple applications for review are counted as a single case where the legislation provides that the applications for review can be combined, usually where members of a family unit have applied for the grant of visas at the same time.



# PRINCIPAL MEMBER'S REPORT

TO PROVIDE VISA APPLICANTS AND SPONSORS WITH INDEPENDENT, FAIR, JUST,  
ECONOMICAL, INFORMAL AND QUICK REVIEWS OF MIGRATION AND REFUGEE DECISIONS

# PART 01

# PRINCIPAL MEMBER'S REPORT

I am pleased to provide this report on the tribunals' operations in a year which has again been a challenging one because of the large increase in review applications.

A combined total of 13,281 applications was received between 1 July 2010 and 30 June 2011, representing increases of 24% for the MRT and 31% for the RRT.

The tribunals finalised 9,181 cases. While RRT decision output increased by 21% compared with 2009–10, the total output from both tribunals was 6% less than in 2009–10. The decrease in finalisations can be attributed to: the increase in the number of RRT applications, which are more complex and to which we must give priority; the large changeover of members in July 2010, with 21 experienced members not reappointed or not seeking reappointment and new members taking time to become fully productive; and the absence on leave of eight experienced RRT members who have taken up positions as Independent Protection Assessors, dealing with the refugee claims of irregular maritime arrivals.

As lodgements exceeded the tribunals' decisions during the year, the number of cases on hand increased by 53% compared with 2009–10.

For the MRT, trends showed significantly increased lodgements of permanent



business refusals, bridging visa refusals and student visa refusals, and decreased lodgements of skilled visa refusals compared with 2009–10.

For the RRT, the top five source countries for lodgements were China (28%), Fiji (9%), India (8%), Egypt (6%) and Malaysia (6%). Lodgements relating to China declined as a proportion of RRT lodgements from 33% in 2009–10 to 28% this year, while lodgements for several other countries increased significantly, notably India and Egypt.

Compliance with the 90 day standard for RRT case finalisation was 71% for the full year. However, compliance with the 90 day target declined in the latter part of the year, due to member capacity

issues arising from the combined impact of the increase in RRT cases and the appointment of experienced members as Independent Protection Assessors. Meeting the target of finalising 70% of RRT cases within 90 days will be a significant challenge in 2011–12. There will also be an impact on our timeliness in deciding MRT cases.

The quality of our decision making remains high, as the continuing reduction in judicial review applications and remittals shows. Only 8% of tribunal decisions made in 2010–11 were the subject of a judicial review application. Tribunal decisions (made in 2010–11 or earlier) were set aside by a court in only 94 (11%) of the 823 matters finalised by the courts in 2010–11. The application of the decision of the High Court in *Berenguel v MIAC* (dealing with the application of certain ‘time of application’ criteria) was the predominant reason for remittal of MRT decisions.

As I have said in previous reports, the operations of the tribunals and the experience of clients in negotiating the review process would be enhanced if legislative changes were made to abolish the procedural code relating to the putting of adverse information to the applicant, to repeal the privative clause and to return migration and refugee decision making to judicial review under the umbrella of the *Administrative Decisions (Judicial Review) Act 1977*. The code has not brought the certainty

intended for it and instead spawns a deal of unproductive litigation.

The Principal Member Direction on Caseload and Constitution for 2011–12 sets an objective for the tribunals to finalise at least 11,500 cases in 2011–12. This target is 25% higher than the finalisations achieved in 2010–11 and represents the tribunals’ commitment to slowing the growth of cases on hand. The target is achievable, subject to the extent to which members are unavailable due to their undertaking Independent Protection Assessment work.

A number of strategies were implemented during the year to introduce processing efficiencies. These strategies have primarily involved allocating groups or batches of like cases to members or groups of members. This has allowed members to focus on particular case types, thereby increasing efficiency in the disposition of the cases. The benefits of these strategies were reflected in the increase in decision outputs towards the end of the year.

The National Members’ Conference was held in March 2011. The keynote speaker was Chief Justice French of the High Court of Australia. Six members of the New Zealand Immigration and Protection Tribunal also attended.

The tribunals held community liaison meetings across the country in December and May. At the meetings

the tribunals provided reports on the caseload and discussed policy and procedural changes. Community liaison members raised issues relating to a number of matters, including caseload priorities, communication with representatives and application forms.

As part of the tribunals' community liaison program, the tribunals held open days at the Melbourne and Sydney Registries during Refugee Week in June 2011. Members and tribunal staff gave short presentations and a mock RRT hearing gave visitors an insight into how RRT hearings are conducted.

In June the Governor-General appointed five Senior Members, 10 full-time members and 12 part-time members to the tribunals for a term of five years with effect from 1 July 2011. The increase in member numbers will increase the operational capacity of the tribunals.

Due to the increased membership in Brisbane, including a senior member located there, the Administrative Appeals Tribunal (AAT) has no longer been able to accommodate us. As a result, the tribunals have leased separate office space near the AAT. The AAT will continue to provide the tribunals with counter, lodgement and hearing facilities under a Memorandum of Understanding.

Eight members (seven members and one senior member) and four staff took up appointments as Independent Protection Assessors during the year. With a further 17 staff taking up staff roles with the Independent Protection Assessment Office, there has inevitably been an impact on the tribunals' capacity to deal with its caseload. The tribunals continue to provide legal and country advice services to Independent Protection Assessors in relation to refugee status

assessments in accordance with a Memorandum of Understanding (MoU) with the department. Over the course of the year, the tribunals provided a total of 690 legal opinions and 213 country research advices to Independent Protection Assessors.

The 2011–12 Federal Budget made increased appropriations to the tribunals of \$13.9 million over the four years of the forward estimates. The increased appropriations are offset by increases in the MRT and RRT application fees and new refund and fee reduction provisions. The application fee has increased from \$1,400 to \$1,540. Application fees had not increased since 1999 for the MRT and since 2003 for the RRT.

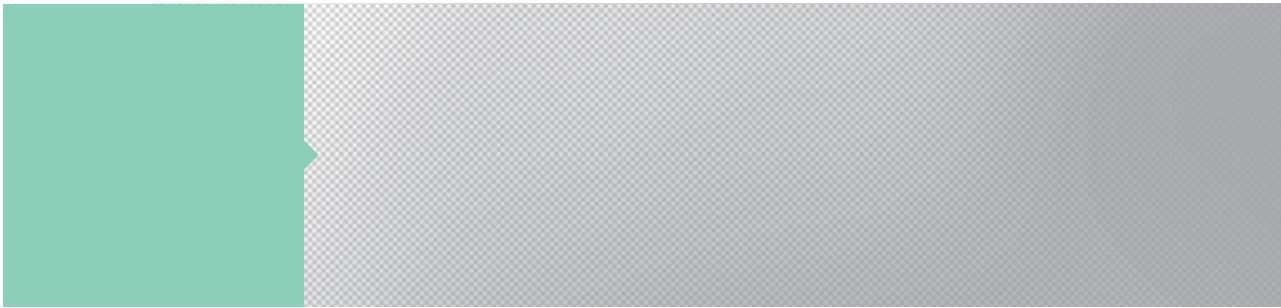
The tribunals will still face significant financial challenges in the coming year. In particular, the tribunals will have significantly increased costs from the net increase in active membership from 81 to 105 members and from increases in member remuneration.

The tribunals are implementing an enhanced governance and business planning framework. The Tribunals' Plan 2011–13 was developed during the year and is a key element of the tribunals' planning framework. It provides overall strategic direction for the next three years. It is the keystone for the new governance structure for the tribunals.

Colin Plowman joined the tribunals in January 2011 as Registrar following the transfer of John Lynch to the Department of Immigration and Citizenship last year to head the Independent Protection Assessment Office. I thank John for the work he did as Registrar, particularly his key role some years ago in amalgamating the

operations of the MRT and the RRT into a single agency. Colin Plowman comes to the tribunals with extensive experience as a senior executive in the Commonwealth and NSW State public sectors.

Finally, I acknowledge the significant effort staff and members of the tribunals have made during the year as we have sought to deal with our significantly increased workload.



# THE ROLE OF THE TRIBUNALS

TO PROVIDE VISA APPLICANTS AND SPONSORS WITH INDEPENDENT, FAIR, JUST,  
ECONOMICAL, INFORMAL AND QUICK REVIEWS OF MIGRATION AND REFUGEE DECISIONS

# PART 02



# THE ROLE OF THE TRIBUNALS

The Migration Review Tribunal (the MRT) and the Refugee Review Tribunal (the RRT) are statutory bodies providing a final, independent merits review of visa and visa-related decisions made by the Minister for Immigration and Citizenship (the Minister) or by officers of the Department of Immigration and Citizenship (the Department), acting as delegates of the Minister.

The tribunals are established under the *Migration Act 1958*. The tribunals' jurisdictions, powers and procedures are set out in the Migration Act and the Migration Regulations 1994. The tribunals comprise members (appointed by the Governor-General under the Migration Act for fixed terms) and staff (appointed under the Migration Act and employed under the *Public Service Act 1999*).

All members and staff are cross-appointed to both tribunals and the tribunals operate as a single agency for the purposes of the *Financial Management and Accountability Act 1997*.

The MRT reviews a wide range of decisions in relation to visas other than protection visas.

The RRT reviews decisions in relation to protection visas.

A visa is required by anyone who is not an Australian citizen and who wishes to travel to, and remain in, Australia. The Migration Act and the Migration Regulations set out the criteria for visas.

There are specific criteria which relate to the purpose of particular visas, and general criteria relating to matters such as health and character.

A visa is refused if a decision maker is not satisfied that a person meets the criteria for the visa. A visa may be cancelled if, for example, it was obtained by making false statements or if the visa holder has not abided by the conditions of the visa.

In reviewing a decision to refuse to grant or to cancel a visa, the tribunals are required to conduct a 'merits review' that is 'independent, fair, just, economical, informal and quick'.

## MERITS REVIEW

Merits review is an administrative reconsideration of a case. A merits review body makes decisions within the same legislative framework as the primary decision maker, and may exercise all the powers and discretions conferred on the primary decision maker.

The principal objective of merits review is to ensure that the correct or preferable decision is reached in the particular case. The decision and reasons of a merits review body should also improve the general quality and consistency of decision making, and enhance openness and accountability of an area of government decision making.



The tribunals reconsider each case in light of the facts before them, the law and government policy. A decision made by a member in one case does not bind members in other cases but it is generally expected that a decision in a particular case would be consistent with other decisions in like matters.

The tribunals have the power to affirm the primary decision, vary the primary decision, set aside the primary decision and substitute a new decision, or remit (return) a matter to the Department for reconsideration with specific directions. For example, a matter may be 'remitted' if a member is satisfied that a visa applicant meets one or more of the criteria for the visa. The Department may then need to undertake further processing in relation to other requirements for the visa such as health, security and character.

## **MATTERS REVIEWED BY THE MRT**

The MRT can review decisions relating to a wide range of visas. Reviewable decisions include decisions to refuse to grant visas, to cancel visas, to refuse to approve sponsors, and to refuse to approve a nominated position or business activity.

Bridging visas provide temporary lawful status to non-citizens in Australia, for example, while a temporary entrant is awaiting the outcome of an application for permanent residence.

Visitor visas are for tourists and persons visiting relatives in Australia. Student visas are granted to persons enrolled at schools, colleges and universities in Australia. Temporary business visas are for persons whose proposed employment or business activities will contribute to the creation or maintenance of employment within Australia, the expansion of Australian trade, an improvement in links with international markets and/or greater competitiveness in the economy.

Permanent business visas are for successful business people, who obtain a substantial ownership interest in a new or existing business in Australia and actively participate in that business at a senior management level. Skilled visas are for persons in skilled occupations who have the education, skills and employability to contribute to the Australian economy.

Partner visas are for partners of Australian citizens or permanent residents. Family visas are for children, parents, remaining relatives (persons who have limited family contacts, other than relatives living in Australia), aged dependent relatives (elderly overseas relatives who have been financially supported by a close Australian relative for a reasonable period) and carers (persons who are able and willing to provide assistance needed by a relative in Australia).

## MATTERS REVIEWED BY THE RRT

The RRT reviews decisions to refuse to grant or to cancel protection visas within Australia. The review of these decisions usually involves a consideration of whether or not the applicant is a person to whom Australia has protection obligations. This involves consideration of whether he or she is a 'refugee' within the meaning of the 1951 United Nations Convention Relating to the Status of Refugees (as amended by the 1967 UN Protocol Relating to the Status of Refugees) (the Convention).

The 1967 UN Protocol Relating to the Status of Refugees (the Protocol) removed the time and geographical limitation in the Convention's definition of a refugee. The Convention now extends to all persons who are refugees because of events occurring at any time in any place. Australia became a signatory to the Refugees Convention in 1954 and to the Protocol in 1973.

The term 'refugee' is defined in Article 1A(2) of the Convention as amended by the Protocol, as a person who:

... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it ...

Other provisions of the Convention may be relevant to an assessment of the entitlement to a protection visa.

A number of provisions of the Migration Act expressly qualify certain aspects of the Convention. These provisions focus principally on the concepts of persecution and the nature and seriousness of certain crimes relevant to the determination of whether Australia has protection obligations to an asylum seeker. Many aspects of the Convention, however, are not specifically defined by the legislation and must be interpreted in accordance with established legal principles.

## APPLYING FOR REVIEW

Whenever a decision is made which is reviewable by the MRT or the RRT, the department is required by law to advise the person or persons involved of their review rights. This includes setting out who can apply for review, where an application for review can be made and the time limit within which the application must be made.

It is important that persons who receive a departmental decision consider the information about review rights carefully. The tribunals do not have discretion to accept an application for review which has been lodged outside the relevant time limit or by a person who is not entitled to apply for review.

Form M1 is the general MRT application form. Form M2 is the MRT application form for persons in immigration detention. Form R1 is the RRT application form. These forms are available on the MRT-RRT website or from the Sydney and Melbourne registries of the tribunals and the Adelaide, Brisbane and Perth registries of the Administrative Appeals Tribunal.

A fee is payable for all MRT applications except applications for review of bridging visa decisions (including any related decision to require a security) that are made by persons in immigration detention.

Changes to the tribunals' fees took effect on 1 July 2011. For applications to the MRT lodged prior to 1 July 2011, a fee of \$1,400 applied and payment of the fee could be waived if payment would cause severe financial hardship. For applications lodged on or after 1 July 2011, a fee of \$1,540 applies and a reduced fee of \$770 may be paid in cases of severe financial hardship.

There is no application fee when applying to the RRT. However, for applications to the RRT lodged before 1 July 2011, a \$1,400 fee was payable if the RRT affirmed the primary decision. For applications lodged on or after 1 July 2011, a post-decision fee of \$1,540 applies if the application is unsuccessful.

## CONDUCT OF REVIEWS

The tribunals are usually constituted by a single member. The member is required to conduct an independent review and reach an independent decision.

An applicant may appoint a representative to assist with his or her case. With very limited exceptions, only a registered migration agent can act as a representative or provide immigration assistance to an applicant before the tribunals. A significant proportion of applicants are not represented and tribunal procedures and information are designed to assist applicants who are not represented.

The applicant (or his or her representative) can request a copy of the documents before the tribunal

and can at any time provide written submissions and written evidence.

A member must ensure that an applicant has the opportunity to address the issues arising in the review, particularly any information which may be the reason or part of the reason for affirming the decision under review. The tribunals can invite an applicant in writing or at hearing to comment on or respond to relevant information.

In most cases, the applicant is invited to attend a hearing to give oral evidence and present arguments on the issues arising in the review. The applicant can ask that an interpreter be provided, and can be accompanied by a representative and/or a friend, relative or support person. The applicant can also request that the tribunal take evidence from other persons.

The hearings do not have a strict procedure; however, evidence is usually taken under oath or affirmation. The member will explain the procedures and ask questions. The applicant may or may not choose to make a statement. Neither the Minister nor the Department is represented.

Hearings are usually held in person, but may also be held through video or telephone links. All hearings are audio recorded, and the applicant can request a copy of the recording.

MRT hearings must be open to the public, unless there is a public interest reason for conducting the hearing in private. All RRT hearings must be held in private.

## INFORMATION AVAILABLE TO ASSIST APPLICANTS

The tribunals provide information to applicants about procedures and processes throughout a review, and publish a wide range of information which can assist applicants or those assisting applicants. Information which is available on the tribunal website at [www.mrt-rrt.gov.au](http://www.mrt-rrt.gov.au) includes:

- Principal Member Directions on the conduct of reviews, putting information orally to applicants, management of detention cases and caseload and constitution arrangements
- the *Guide to Refugee Law in Australia*
- guidelines on the assessment of credibility, vulnerable persons, expert opinion evidence, quality decision making, the use of interpreters, gender considerations and referrals of cases for Ministerial intervention consideration

- *Précis* – a bulletin produced 11 times per year, which summarises selected tribunal decisions, court judgments, country advice and selected statistics
- country advice information on more than 90 countries
- forms, brochures and factsheets
- statistics on caseloads and the timeliness of reviews
- a processing times calculator
- the tribunals' Service Charter
- a webpage specifically aimed at the needs of representatives
- a daily schedule for MRT and RRT hearings

Tribunal decisions are available on the AustLII website at [www.austlii.edu.au](http://www.austlii.edu.au). The tribunals currently publish at least 40% of decisions made. RRT decisions are edited to remove information which would identify an applicant or relatives of an applicant, as required by the Migration Act.



MRT decisions are published in full, as required by the Migration Act, unless the member has determined that publication of certain information or the applicant's identity would not be in the public interest.

## DECISIONS

The member may in some cases make an oral decision at the end of a hearing. In most cases, the member either allows time for further documents to be lodged or needs more time to consider the case.

In all cases, a written statement of decision and reasons is prepared and provided to the applicant and the Department.

## VISION, PURPOSE AND VALUES

The tribunals provide an independent and final merits review of decisions. The review must be fair, just, economical, informal and quick. We seek to treat all those with whom we deal with courtesy, respect and dignity.

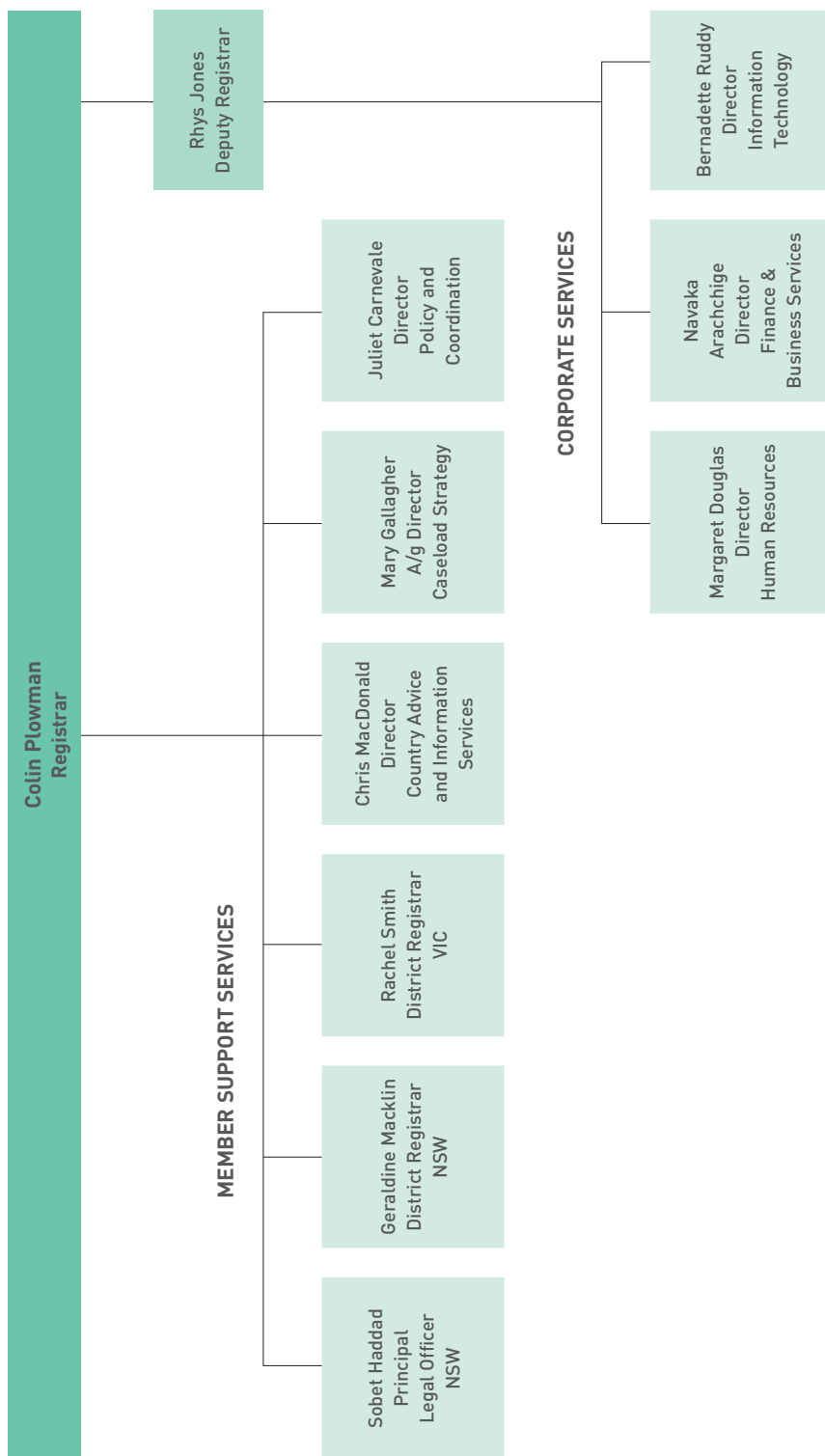
The Tribunals' Plan, Member Code of Conduct, Service Charter and Interpreters' Handbook promote and uphold these values. All of these documents are available on the tribunals' website. A membership chart of active members is at page 22. A staff organisational chart is at page 23. An overview of information about the tribunals is set out in 'The tribunals at a glance' at page 7.

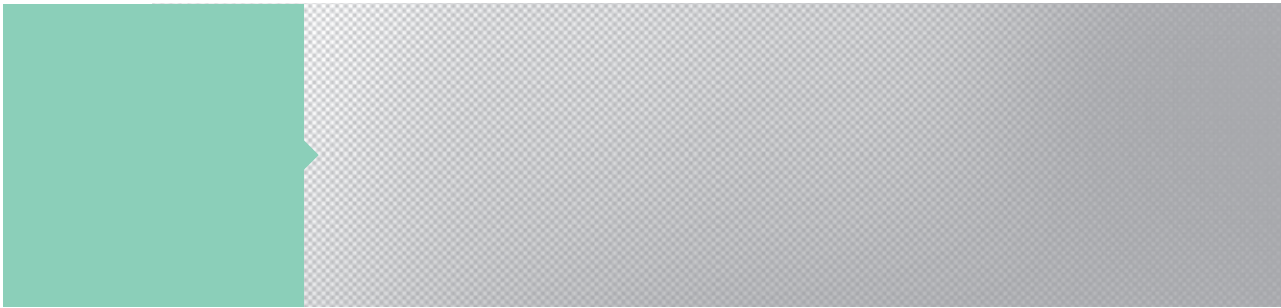
## MEMBERSHIP AS AT 1 JULY 2011

<b>Denis O'Brien</b> Principal Member	
<b>Amanda MacDonald</b> Deputy Principal Member	
<b>John Billings</b> Senior Member VIC	<b>Donald Smyth</b> Senior Member QLD
<b>Linda Kirk</b> Senior Member VIC	<b>Giles Short</b> Senior Member NSW
<b>Peter Murphy</b> Senior Member VIC	<b>Shahyar Roushan</b> Senior Member NSW
<b>John Cipolla</b> Senior Member NSW	<b>Kira Raif</b> Senior Member NSW
<b>John Billings</b> Senior Member VIC	<b>Full-Time</b> Jennifer Beard Antonio Dronjic Paul Fisher Dom Lennon Alison Mercer David Mitchell <b>Part-Time</b> Sean Baker Tim Connellan Anthony Krohn Gary Ledson Sydelle Muling Alison Murphy David Young Kirsten Young
<b>Linda Kirk</b> Senior Member VIC	<b>Full-Time</b> Margret Holmes Donald Lucas Adam Moore Charles Powles Mary Urquhart <b>Part-Time</b> Margie Bourke Melissa Bray Mary Cameron Jennifer Ellis Brook Hely Deborah Jordan Sophia Panagiotidis Karen Synon
<b>Peter Murphy</b> Senior Member VIC	<b>Full-Time</b> Danica Buljan Tony Caravella Patrick Francis George Haddad Chris Smolicz <b>Part-Time</b> Nicole Burns Steve Georgiadis Diane Hubble Marten Kennedy Vanessa Moss Belinda Wells Carolyn Wilson
<b>John Cipolla</b> Senior Member NSW	<b>Full-Time</b> Suseela Durvasula Ismail Hasan Simon Jeans Hugh Sanderson Robert Wilson <b>Part-Time</b> Catherine Carney- Osborn Gabrielle Cullen David Dobell Jonathon Duignan Bronwyn Forsyth Ann O'Toole Rania Skaros
<b>Kira Raif</b> Senior Member NSW	<b>Full-Time</b> Denise Connolly Wan Shum Linda Symons <b>Part-Time</b> Christine Cody Diane Barnettson Sally Hunt Suhad Kamand Josephine Kelly Suzanne Leal Andrew Mullin Susan Pinto
<b>Shahyar Roushan</b> Senior Member NSW	<b>Full-Time</b> Richard Derewlany Dione Dimitriadis Ruth Cheetham Andrew Rozdilsky <b>Part-Time</b> Jennifer Ciantar Mila Foster Rowena Irish Christine Long Rosie Mathlin Pauline Pope Meena Sripathy
<b>Giles Short</b> Senior Member NSW	<b>Full-Time</b> Alan Duri Paul Millar Louise Nicholls James Silva <b>Part-Time</b> Angela Cranston Megan Deane Ted Delofski Naida Isenberg Andrew Jacovides Patricia Leehy Bruce MacCarthy Pamela Summers
<b>Donald Smyth</b> Senior Member QLD	<b>Full-Time</b> Michelle Grau Jan Spiers Fraser Syme <b>Part-Time</b> Clyde Cosentino Glen Cranwell Jennifer Eutick Lesley Hunt Kay Kirmos Alexis Wallace

Note: Excludes members on leave of absence to the Independent Protection Assessment Office (IPAO) until 31 December 2012.

# STAFF ORGANISATIONAL CHART







# PERFORMANCE REPORT

TO PROVIDE VISA APPLICANTS AND SPONSORS WITH INDEPENDENT, FAIR, JUST,  
ECONOMICAL, INFORMAL AND QUICK REVIEWS OF MIGRATION AND REFUGEE DECISIONS

# PART 03

# PERFORMANCE REPORT

The tribunals contributed to Australia's migration and refugee programs during the year through the provision of quality and timely reviews of decisions, completing 9,181 reviews. The outcomes of review were favourable to applicants in 37% of the cases decided.

## PERFORMANCE FRAMEWORK

The tribunals operate in a high volume decision making environment where the case law and legislation are complex and technical. In this context, fair and lawful reviews are dependent on a number of factors, including resources, member numbers and skilled staff support services.

Both tribunals have identical statutory objectives, set out in sections 353 and 420 of the Migration Act:

**The Tribunal shall, in carrying out its functions under this Act, pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick.**

The key strategic priorities for the tribunals are to meet the statutory objectives through the delivery of consistent, high quality reviews and timely and lawful decisions. Each review has to be conducted in a way that ensures, as far as practicable, that the applicant understands the issues and has a fair opportunity to comment on or respond to any matters which might lead to an adverse outcome.

The tribunals also aim to meet government and community expectations and to have effective working relationships with stakeholders. These priorities are reflected in the Tribunals' Plan.

During 2010–11, the key outcome agreed with Government was:

**To provide correct and preferable decisions for visa applicants and sponsors through independent, fair, just, economical, informal and quick merits reviews of migration and refugee decisions.**

The tribunals had one program contributing to this outcome, which was:

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

Table 3.1 summarises the tribunals' performance against the program deliverables and key performance indicators that were set out in the 2010–11 portfolio budget statements.

**TABLE 3.1 – PERFORMANCE INFORMATION AND RESULTS**

Measure	Result
<b>DELIVERABLES</b>	
8,300 cases	The tribunals decided 9,181 cases.
<b>KEY PERFORMANCE INDICATORS</b>	
Less than 5% of tribunal decisions set aside by judicial review	At the time of this report, 0.3% of MRT and 1.1% of RRT decisions made in 2010–11 had been set aside by judicial review.
70% of cases decided within time standards	96% of bridging visas (detention cases) were decided within 7 working days. 71% of RRT cases were decided within 90 calendar days. 60% of MRT visa cancellations were decided within 150 calendar days. 55% of general MRT cases were decided within 350 days.
Less than 5 complaints per 1,000 cases decided	The tribunals received less than 3 complaints per 1,000 cases decided.
40% of decisions published	The tribunals published 43% of all decisions.

A feature of 2010–11 has been the very large increase in lodgements for both the MRT and the RRT and the transfer of eight members including a senior member to the Independent Protection Assessment Office.

The IPA0 makes and reviews assessments of protection claims made by offshore entry persons who cannot apply for a visa unless permitted to do so by the Minister personally. These assessments are not reviewable by the MRT or RRT. Members and staff who are among those appointed as reviewers and assessors are on leave of absence from the tribunals while conducting those duties.

As lodgements exceeded the tribunals' decisions during the year, the number of cases on hand increased by 53% compared to 2009–10. The tribunals have responded to these challenges with strategies to improve processing efficiency. The strategies have primarily involved allocating groups or batches of like cases to members or groups of members. This has allowed members to develop greater expertise in relation to these case types, to reduce hearing times and to reduce the number of days taken to finalise cases from constitution to decision.

## FINANCIAL PERFORMANCE

The MRT and the RRT are prescribed as a single agency, the 'Migration Review Tribunal and Refugee Review Tribunal' (the MRT-RRT) for the purposes of the *Financial Management and Accountability Act 1997*.

The tribunals' funding is based on a funding agreement with the Department of Finance and Deregulation which takes into account the number of cases decided and an assessment of fixed and variable costs. The tribunals were funded to decide 8,300 cases in 2010–11. The tribunals decided 9,181 cases, and the tribunals' revenue as set out below takes into account an adjustment to appropriation based on the number of cases decided.

The tribunals' revenues from ordinary activities totalled \$42.9m and expenditure totalled \$45.5m, resulting in a net loss of \$2.6m. The tribunals received approval from the Finance Minister for an operating loss of up to \$4.4m for the financial year.

The 2011–12 Federal Budget provided increased appropriations of \$13.9m less the increase in the efficiency dividend applicable across the public sector over the four years of the forward estimates. The increased appropriations to the tribunals are offset by increases in the MRT and RRT application fees and new refund and fee reduction procedures with effect from 1 July 2011.

The tribunals administer application fees on behalf of government. Details of administered revenue are set out in the financial statements.

The financial statements for 2010–11, which are set out in Part 5, have been audited by the Australian National Audit Office and received an unqualified audit opinion.

## OVERVIEW OF CASELOAD

The tribunals received 13,281 cases during the year and decided 9,181 cases:

- The MRT received 10,315 cases, decided 6,577 cases and had 10,786 active cases at the end of the year.
- The RRT received 2,966 cases and decided 2,604 cases, and had 1,100 active cases at the end of the year.

Statistical tables and charts covering the MRT and RRT caseloads are set out on pages 30–38.

## LODGEMENTS

Lodgements of applications for review tend to fluctuate between years, according to trends in primary applications and in primary decision making and changes to visa criteria and jurisdiction.

The MRT has jurisdiction to review a wide range of visa, sponsorship and other decisions relating to migration and temporary entry visas. Only a small proportion of primary decisions made by the Department come to the MRT.

In 2010–11, the MRT had very large increases in student refusal and student cancellation lodgements, as well as moderate increases in permanent business, partner and visitor lodgements.

Approximately 27% of visa refusal applications to the MRT related to

persons outside Australia seeking a visa. The MRT's jurisdiction in relation to visas applied for outside Australia depends on whether there is a requirement for an Australian sponsor or for a close relative to be identified in the application, and these cases are mainly in the skilled, visitor, partner and family categories.

The RRT has jurisdiction to review protection (refugee) visa decisions made within Australia. Over 4,000 protection visa applications were initially refused at the primary level. All protection visa applicants within Australia have a right to apply for review if a protection visa is refused.

While lodgements to the RRT were made by applicants from over 106 countries, 55% of the RRT's lodgements involved nationals of five countries, the People's Republic of China (PRC), Fiji, India, Egypt and Malaysia. The largest number of applications was from nationals of the PRC: these applications were over three times the number of applications received from the next largest source country, Fiji.

Applicants to both tribunals tend to be located in the larger metropolitan areas. 48% of all applicants resided in New South Wales, mostly in the Sydney region. Approximately 25% of applicants resided in Victoria, 12% in Queensland, 8% in Western Australia, 4% in South Australia, 2% in the Australian Capital Territory and Northern Territory combined and less than 1% in Tasmania.

Cases involving applicants held in immigration detention comprised 3.3% of the cases before the tribunals, with most applicants within Australia holding a bridging visa or other visa during the course of the review.

## STATISTICS

### Caseload overview

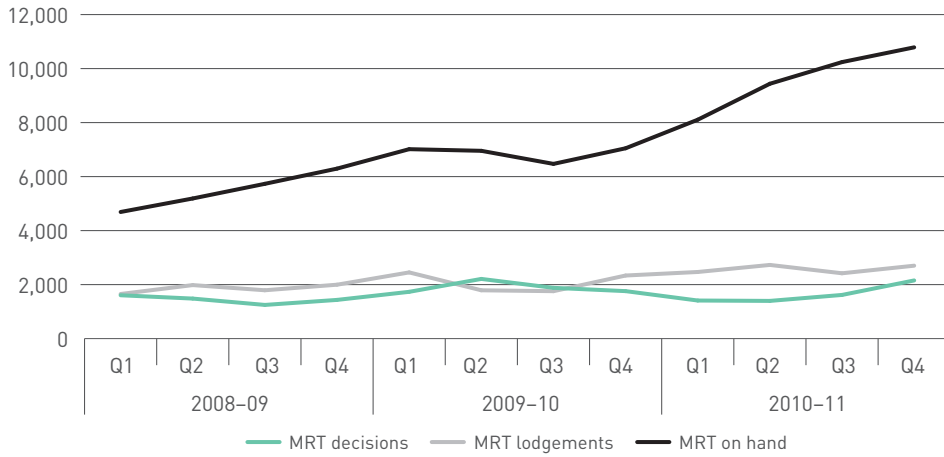
	2010-11	2009-10	2008-09
<b>MIGRATION REVIEW TRIBUNAL</b>			
On hand at start of year	7,048	6,295	4,640
Lodged	10,315	8,332	7,422
Decided	6,577	7,580	5,767
On hand at end of year	10,786	7,048	6,295
<b>REFUGEE REVIEW TRIBUNAL</b>			
On hand at start of year	738	624	548
Lodged	2,966	2,271	2,538
Decided	2,604	2,157	2,462
On hand at end of year	1,100	738	624
<b>TOTAL MRT AND RRT</b>			
On hand at start of year	7,786	6,919	5,188
Lodged	13,281	10,603	9,960
Decided	9,181	9,737	8,229
On hand at end of year	11,886	7,786	6,919

### Lodgements

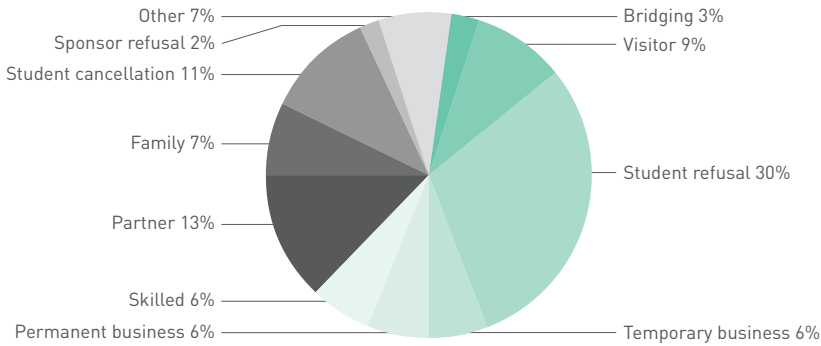
	2010-11	2009-10	2008-09	% change 2009-10 to 2010-11
<b>MIGRATION REVIEW TRIBUNAL</b>				
Visa refusal - Bridging	264	139	139	+90%
Visa refusal - Visitor	920	690	562	+33%
Visa refusal - Student	3,138	1,937	691	+62%
Visa refusal - Temporary business	621	567	684	+10%

	2010-11	2009-10	2008-09	% change 2009-10 to 2010-11
Visa refusal – Permanent business	661	285	314	+132%
Visa refusal - Skilled	635	1,182	1,889	-46%
Visa refusal – Partner	1,348	1,157	1,372	+17%
Visa refusal – Family	672	739	536	-9%
Cancellation – Student	1,107	875	501	+27%
Sponsor approval refusal	174	187	209	-7%
Other	775	574	525	+35%
<b>Total MRT</b>	<b>10,315</b>	<b>8,332</b>	<b>7,422</b>	<b>+24%</b>
<b>REFUGEE REVIEW TRIBUNAL</b>				
China (PRC)	819	751	999	9%
Fiji	252	243	59	4%
India	221	138	287	60%
Egypt	181	52	39	248%
Malaysia	172	201	165	-14%
Indonesia	146	115	115	27%
Lebanon	125	84	80	49%
Nepal	107	28	25	282%
Pakistan	102	53	58	92%
Zimbabwe	84	52	40	62%
Other	757	554	671	37%
<b>Total RRT</b>	<b>2,966</b>	<b>2,271</b>	<b>2,538</b>	<b>31%</b>
<b>Total MRT and RRT</b>	<b>13,281</b>	<b>10,603</b>	<b>9,960</b>	<b>25%</b>

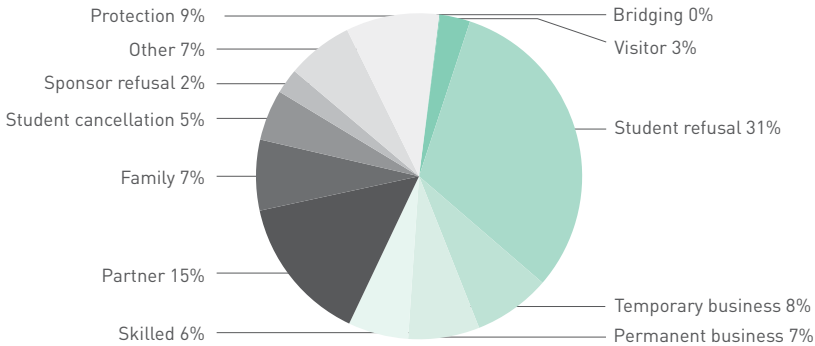
### MRT lodgements, decisions and cases on hand



### MRT lodgements by case type

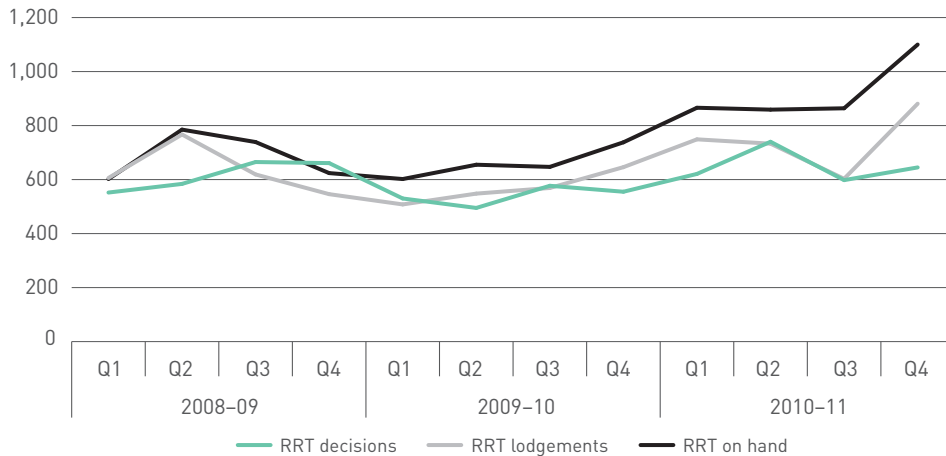


### MRT and RRT cases on hand

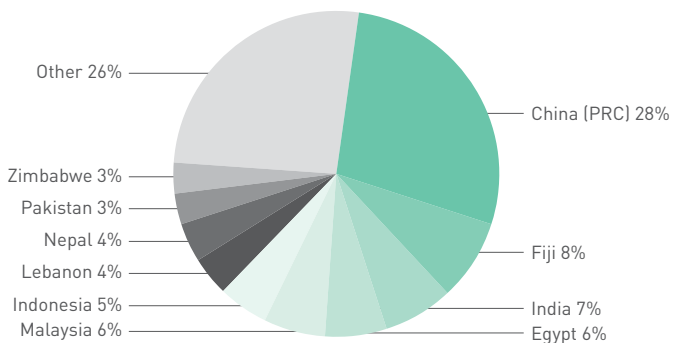




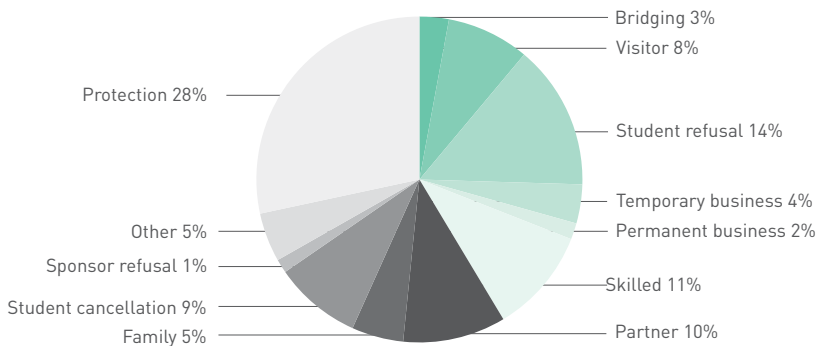
### RRT lodgements, decisions and cases on hand



### RRT lodgements by country of reference



### MRT and RRT decisions 2010-11



## Cases on hand

	2010-11	2009-10	2008-09
<b>MIGRATION REVIEW TRIBUNAL</b>			
Visa refusal – Bridging	9	12	24
Visa refusal – Visitor	357	189	178
Visa refusal – Student	3,716	1,898	699
Visa refusal – Temporary business	911	645	649
Visa refusal – Permanent business	841	328	322
Visa refusal – Skilled	711	1,034	1,746
Visa refusal – Partner	1,731	1,320	1,431
Visa refusal – Family	833	632	439
Cancellation – Student	600	289	224
Sponsor approval refusal	296	247	214
Other	781	454	369
<b>Total MRT</b>	<b>10,786</b>	<b>7,048</b>	<b>6,295</b>
<b>REFUGEE REVIEW TRIBUNAL</b>			
China (PRC)	279	219	229
Fiji	64	130	14
India	80	39	70
Egypt	112	18	10
Malaysia	17	32	27
Indonesia	36	10	17
Lebanon	49	19	15
Nepal	56	13	6
Pakistan	59	16	15
Zimbabwe	30	23	26
Other	318	219	195
<b>Total RRT</b>	<b>1,100</b>	<b>738</b>	<b>624</b>
<b>Total MRT and RRT</b>	<b>11,886</b>	<b>7,786</b>	<b>6,919</b>

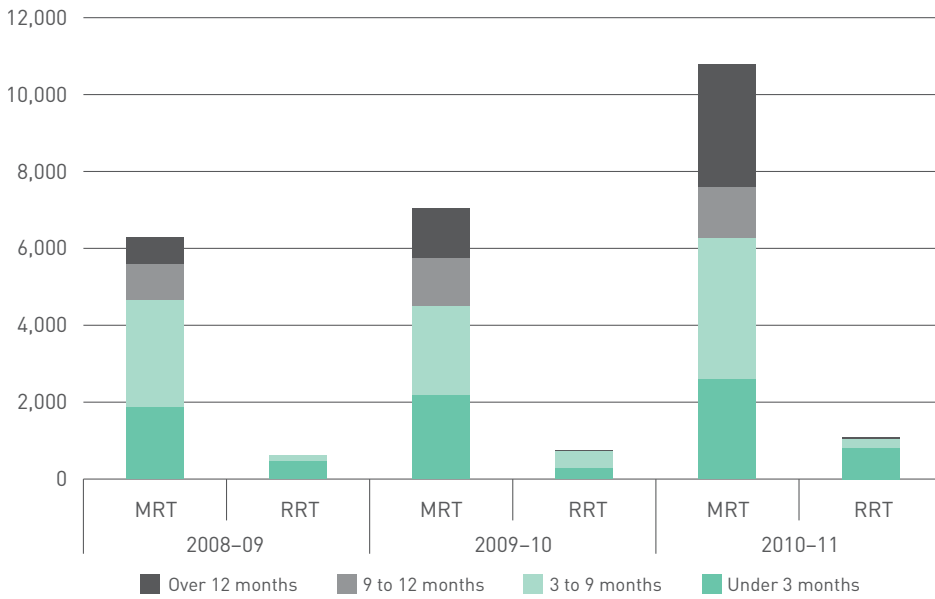
## Timeliness of reviews

	2010-11	2009-10	2008-09
<b>AVERAGE TIME TAKEN (DAYS)*</b>			
Bridging (detention) cases (MRT)	7	7	7
Visa cancellations (MRT)	150	123	114
All other MRT cases	337	311	293
Protection visa cases	99	99	86
<b>PERCENTAGE DECIDED WITHIN TIME STANDARDS*</b>			
Bridging (detention) cases (MRT) – 7 working days	96%	89%	88%
Visa cancellations (MRT) – 150 calendar days	60%	76%	79%
All other MRT cases – 350 calendar days †	55%	52%	50%
Protection visa cases – 90 calendar days	71%	69%	73%

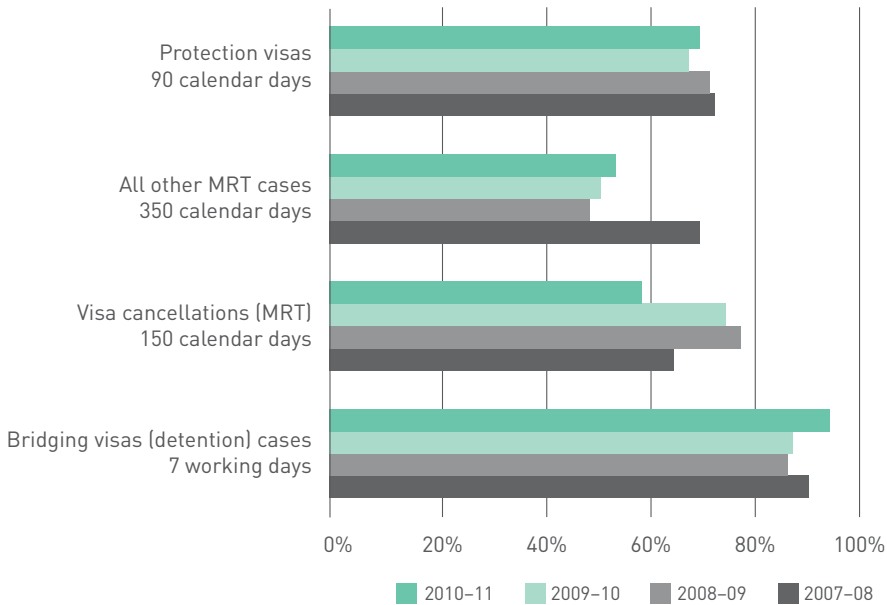
\* Calendar days other than for bridging (detention) cases which is by working days. Time standards as set out in the Migration Act and Migration Regulations or in the 2010-11 Portfolio Budget Statement. For MRT cases, time taken is calculated from date of lodgement. For RRT cases, time taken is calculated from the date the Department's documents are provided to the RRT. The average time from lodgement of an application for review to receipt of the Department's documents was 21 days for MRT cases and 6 days for RRT cases.

†In 2008-09, the applicable time standard was 320 days. Figures shown are against the time standard which applied in the relevant financial year.

### Number and age of cases on hand



### Percentage of cases decided within time standards



## Outcomes of review

	2010-11	2009-10	2008-09
<b>MIGRATION REVIEW TRIBUNAL</b>			
Primary decision set aside or remitted	2,728	3,429	2,783
Primary decision affirmed	2,356	2,700	2,005
Application withdrawn by applicant	754	796	495
No jurisdiction to review*	739	655	484
<b>Total</b>	<b>6,577</b>	<b>7,580</b>	<b>5,767</b>
<b>REFUGEE REVIEW TRIBUNAL</b>			
Primary decision set aside or remitted	626	514	468
Primary decision affirmed	1,815	1,540	1,787
Application withdrawn by applicant	53	21	29
No jurisdiction to review*	110	82	178
<b>Total</b>	<b>2,604</b>	<b>2,157</b>	<b>2,462</b>

\* No jurisdiction decisions include applications not made within the prescribed time limit, not made in respect of reviewable decisions or not made by a person with standing to apply for review. The tribunals' procedures provide for an applicant to be given an opportunity to comment on any jurisdiction issue before a decision is made. Some cases raise complex questions as to whether a matter is reviewable and whether a person has been properly notified of a decision and of review rights.

## Cases decided and set aside rates

	2010-11		2009-10		2008-09	
	Cases	% set aside	Cases	% set aside	Cases	% set aside
<b>MIGRATION REVIEW TRIBUNAL</b>						
Visa refusal – Bridging	267	12%	151	15%	133	12%
Visa refusal – Visitor	752	59%	679	58%	637	59%
Visa refusal – Student	1,320	36%	738	42%	564	37%
Visa refusal – Temporary business	355	25%	571	30%	560	37%

	2010-11		2009-10		2008-09	
	Cases	% set aside	Cases	% set aside	Cases	% set aside
Visa refusal – Permanent business	148	32%	278	46%	165	42%
Visa refusal – Skilled	958	53%	1,895	42%	958	51%
Visa refusal – Partner	937	62%	1,268	66%	1,221	67%
Visa refusal – Family	471	39%	546	42%	557	45%
Cancellation – Student	796	25%	811	41%	412	40%
Sponsor approval refusal	126	22%	161	21%	96	27%
Other	447	32%	482	38%	464	35%
<b>Total MRT</b>	<b>6,577</b>	<b>41%</b>	<b>7,580</b>	<b>45%</b>	<b>5,767</b>	<b>48%</b>
<b>REFUGEE REVIEW TRIBUNAL</b>						
China (PRC)	759	22%	761	27%	986	21%
Fiji	318	13%	127	15%	54	13%
India	181	7%	169	6%	265	4%
Egypt	87	36%	44	52%	35	31%
Malaysia	187	2%	196	3%	166	7%
Indonesia	120	4%	122	7%	129	8%
Lebanon	95	31%	80	26%	79	32%
Nepal	64	16%	21	33%	33	27%
Pakistan	59	36%	52	42%	54	17%
Zimbabwe	77	61%	55	58%	22	55%
Other	657	39%	530	25%	639	26%
<b>Total RRT</b>	<b>2,604</b>	<b>24%</b>	<b>2,157</b>	<b>24%</b>	<b>2,462</b>	<b>19%</b>
<b>Total MRT and RRT</b>	<b>9,181</b>	<b>37%</b>	<b>9,737</b>	<b>40%</b>	<b>8,229</b>	<b>40%</b>

## CONDUCT OF REVIEWS

The procedures of the MRT and the RRT are inquisitorial rather than adversarial in nature. Proceedings before the tribunals do not take the form of litigation between parties. The review is an inquiry in which the member identifies the issues or criteria in dispute, initiates investigations or inquiries to supplement evidence provided by the applicant and the Department and ensures procedural momentum. At the same time, the member must maintain an open and impartial mind.

Applicants appointed a representative to assist or represent them in 65% of MRT cases decided and in 53% of RRT cases decided.

In the 6,577 MRT cases decided, hearings were arranged in 4,209 cases, and held in 3,485 or 53% of the cases decided. In the 2,604 RRT cases decided, hearings were arranged in 2,473 cases, and held in 1,927 or 74% of the cases decided.

The cases which do not proceed to hearing include cases where a decision favourable to the applicant is made prior to the hearing date, cases where the applicant does not attend the hearing or which can be decided without a hearing being required, and cases where the applicant withdraws his or her application before the hearing. Favourable decisions on the papers were made in 9% of MRT cases (including in 29% of skilled visa refusal cases) and in less than 1% of RRT cases.

Most hearings are held in person. Video links were used in 15% of hearings. The average duration of MRT hearings was 75 minutes, and the average duration of RRT hearings was 135 minutes. Two or

more hearings were held in 11% of RRT cases and in 4% of MRT cases.

## INTERPRETERS AT HEARINGS

The tribunals aim to identify, implement and promote best practice in interpreting at hearings. High quality interpreting services are fundamental to the work of the tribunals. In 2010–11, the tribunals arranged 8,769 hearings. Interpreters were required for 65% of MRT hearings and for 83% of RRT hearings, across approximately 89 languages and dialects.

The tribunals have an Interpreter Advisory Group (IAG), which has the overall objective of ensuring, as far as possible, that the tribunals maintain access to a high standard of interpreters and that tribunal practices facilitate this. The IAG has a national membership comprising both members and tribunal officers. The IAG monitors developments in the use of interpreters and makes recommendations to the Management Board and the Member Professional Development Committees. The IAG also arranges or conducts training for both new and existing members.

The IAG has a national membership. The IAG is chaired by Member Paul Fisher, and comprises Senior Members Shahyar Roushan and Don Smyth, Members Paul Millar and Rosie Mathlin, and five registry officers.

## OUTCOMES OF REVIEW

A written statement of decision and reasons is prepared in each case and provided to both the applicant and the Department.

The MRT set aside or remitted the primary decision in 41% of cases decided and affirmed the primary decision in 36% of cases decided. The remaining

23% of cases were either withdrawn by the applicant or were cases where the tribunal decided it had no jurisdiction to conduct the review.

The RRT set aside or remitted the primary decision in 24% of cases decided and affirmed the primary decision in 70% of cases decided. The remaining 6% of cases were either withdrawn by the applicant or were cases where the tribunal decided it had no jurisdiction to conduct the review.

The fact that a decision is set aside by the tribunal is not necessarily a reflection on the quality of the primary decision, which may have been correct and reasonable on the information available at the time of the decision. Departmental officers in general make sound decisions across a very large volume of cases and make favourable decisions in the majority of cases.

Applicants for review typically address the issues identified by the primary decision maker by providing submissions and further evidence to the tribunal. By the time of the tribunal's decision, there is often considerable additional information before the tribunal, and there may be court judgments or legislative changes which affect the outcome of the review.

Applicants were represented in 61% of cases before the tribunals. Most commonly, representation was by a registered migration agent. In cases where applicants were represented, the set aside rate was higher than for unrepresented applicants. The difference was most notable for RRT cases where the set aside rate was 35% for represented applicants and 12% for unrepresented applicants. Unrepresented applicants may or

may not have sought advice on their prospects of success before applying for review, and only 50% of unrepresented applicants to the RRT attend hearings, compared to almost 87% of applicants who have a representative. For the MRT, there was also an appreciable difference in outcome for unrepresented applicants. The set aside rate was 45% for represented applicants and 35% for unrepresented applicants.

Set aside rates also vary by gender of the review applicant. For the MRT, the set aside rate was 46% for females and 39% for males. For the RRT, the set aside rate for females was 28% and the set aside rate for males was 22.4%.

A total of 215 cases (2% of the cases decided) were referred to the Department during the year for consideration under the Minister's intervention guidelines. These cases raised humanitarian or compassionate circumstances which members considered should be drawn to the attention of the Minister.

## TIMELINESS

The tribunals aim to resolve cases quickly. Members actively manage their caseloads from the time of allocation until decision. Members are expected to identify quickly the relevant issues in a review and the necessary courses of action to enable the review to be conducted as effectively and efficiently as possible. Older cases are monitored by Senior Members to assist in minimising unnecessary delays.



Some cases cannot be decided within the relevant time standard. These include cases where hearings need to be rescheduled because of illness or the unavailability of an interpreter, cases where the applicant requests further time to comment or respond to information, cases where new information becomes available, and cases where an assessment or information needs to be obtained from another body or agency.

Increasingly, cases cannot be decided within the relevant time standards due to the growing volume of cases on hand. In 2010–11 the tribunals' active caseload increased by 53% compared to 2009–10. While the tribunals have responded by developing strategies to improve processing efficiencies, the active caseload has continued to increase.

As required by section 441A of the Migration Act, the Principal Member provided reports every four months relating to tribunal compliance with the 90 day period for RRT reviews. These reports are provided to the Minister for tabling in Parliament. Over 2010–11, 71% of RRT cases were decided within 90 days; the average time to decision was 99 days. The reasons why cases exceeded 90 days included compliance with statutory procedural requirements (59% of cases), further investigations, submission of further material after the hearing, and the postponement or adjournment of hearings.

## JUDICIAL REVIEW

For persons wishing to challenge an MRT or RRT decision, two avenues of judicial review are available. One is to the Federal Magistrates Court for review under section 476 of the Migration Act. The other is to the High Court pursuant

to paragraph 75(v) of the Constitution. Decision making under the Migration Act remains an area where the level of court scrutiny is very intense and where the same tribunal decision or same legal point may be upheld or overturned at successive levels of appeal.

The applicant and the Minister are generally the parties to a judicial review of a tribunal decision. Although joined as a party to proceedings, the tribunals do not take an active role in litigation. As a matter of course, the tribunals enter a submitting appearance, consistently with the principle that an administrative tribunal should generally not be an active party in judicial proceedings challenging its decisions.

In 2010–11 the number and percentage of RRT decisions taken to judicial review decreased in comparison with previous years. The number of MRT decisions taken to judicial review was broadly consistent with previous years although the percentage has fluctuated slightly. Table 3.2 sets out judicial review applications and outcomes in relation to the tribunal decisions made over the last 3 years.

If a tribunal decision is set aside or quashed, the court order is usually for the matter to be remitted to the Tribunal to be reconsidered. In such cases, the Tribunal (usually constituted by a different member) must reconsider the case and make a fresh decision, taking into account the decision of the court and any further evidence or changed circumstances. In 62% of MRT cases and 33% of RRT cases reconsidered in 2010–11 the reconstituted tribunal made a decision favourable to the applicant.

**TABLE 3.2 – JUDICIAL REVIEW APPLICATIONS AND OUTCOMES AS AT 31 AUGUST 2011**

	MRT			RRT		
	2010–11	2009–10	2008–09	2010–11	2009–10	2008–09
Tribunal decisions	6,577	7,580	5,767	2,604	2,157	2,462
<b>Court applications</b>	<b>251</b>	<b>248</b>	<b>244</b>	<b>520</b>	<b>524</b>	<b>855</b>
% of tribunals decisions	3.8%	3.3%	4.2%	20%	24.3%	34.7%
<b>Applications resolved</b>	<b>116</b>	<b>237</b>	<b>242</b>	<b>304</b>	<b>505</b>	<b>851</b>
– decision upheld or otherwise resolved	95	160	166	276	461	732
– set aside by consent or judgement	21	77	76	28	44	119
– set aside decisions as % of judicial applications resolved	18.1%	32.5%	31.4%	9.2%	8.7%	14%
– set aside decisions as % of MRT/RRT decisions made	0.3%	1.0%	1.3%	1.1%	2.0%	4.8%

Note: The table above shows the number of tribunal decisions made during the reporting period that have been the subject of a judicial review application, and the judicial review outcome for those cases.

The outcome of judicial review applications is reported on completion of all court appeals against a tribunal decision. Previous years' figures are affected if a further court appeal is made in relation to a case previously counted as completed.

Summaries of some notable judicial decisions since 1 July 2010 are set out on the following pages. These decisions had an impact on the tribunals' decision making or procedures, or on the operation of judicial review in relation to tribunal decisions.

As there are restrictions on identifying applicants for protection visas, letter codes or reference numbers are used by the courts in these cases. Unless stated otherwise, references are to the Migration Act and Migration Regulations. The Minister is a party in most cases, and “MIAC” is used to identify the Minister in the abbreviated citations provided.

### **RRT – UNDERTAKING INQUIRIES REQUESTED BY AN APPLICANT**

The visa applicant applied for a protection visa on the basis that he feared harm in Nepal because of his support for Maoists. He attributed inconsistencies in the evidence to depression, bipolar mood disorder and forgetfulness. He provided statutory declarations and certificates from a psychiatrist in support, and his representative asked the RRT to arrange an independent assessment if not satisfied with these. The RRT did not arrange such an assessment and proceeded to find that the applicant was not a supporter of the Maoists. The RRT’s decision was upheld on appeal to the Federal Magistrates Court but then overturned by the Federal Court. The High Court on appeal held that the RRT decision could not be overturned on the basis that procedural decisions made during the course of the review are not referred to in an RRT decision. The Court held that the Migration Act did not impose a general duty upon the RRT to make inquiries, or a legal obligation to exercise the power under section 427(1)(d) to require the Secretary of the Department of Immigration to undertake an investigation. [*MIAC v SZGUR* [2011] HCA 1]

### **RRT - RESTRICTIONS ON DUAL NATIONALS APPLYING FOR A PROTECTION VISA**

The visa applicants applied for protection visas on the basis that they feared persecution in North Korea. They claimed to be North Korean nationals and never to have resided in South Korea. Their applications were refused by a delegate of the Minister and they sought review by the RRT. The RRT found that the applicants were nationals of North Korea as claimed but were also nationals of South Korea. It found that South Korean nationality laws conferred South Korean nationality on all people born within the Korean peninsula. The RRT concluded that as the applicants were dual nationals, they were prevented by section 91P of the *Migration Act 1958* from making a valid protection visa application. The Federal Magistrates Court on review agreed that the applicants’ protection visa applications were invalid. The Court held that Subdivision AK of the Act, and s.91N(1) in particular, were intended to render invalid a protection visa application when made by a person with dual nationality in the absence of a prior determination by the Minister under s.91Q that s.91P does not apply to that person. This was so even if the local laws of the country of dual nationality did not confer a right of entry and residence at the date of the visa application. [*SZOUY & Ors v MIAC & Anor* [2011] FMCA 347]

### **RRT – NOTICE OF WITNESSES**

The visa applicant applied for a protection visa on the basis that he feared persecution in Lebanon. On the day of the RRT hearing, the applicant attended the tribunal premises with two witnesses who were asked to wait outside the hearing room while

he was taken inside. The applicant did not separately draw the Presiding Member's attention to the presence of his witnesses and the Member closed the hearing without taking evidence from the witnesses. The Tribunal found the applicant was not a credible witness and while accepting some of his claims ultimately found that he would receive effective state protection. On review before the Federal Magistrates Court, the applicant gave evidence that he completed the 'Response to Hearing Invitation' form (the response) which nominated the witnesses and returned it to the RRT within about a week of receiving it, although there was no evidence of receipt by the RRT of the form, or of the form itself on the RRT file. The Court held that the RRT erred in failing to have regard to the applicant's requests to call witnesses. The Court found that section 426(2) of the Migration Act required dispatch of response by an applicant within 7 days of being notified under section 426(1), rather than receipt by the RRT within 7 days. On the applicant's evidence the response was dispatched by him within 7 days, and thus was required to be considered. [SZOGI v MIAC & Anor [2010] FMCA 390]

### **MRT – JUDICIAL REVIEW FOR THE PURPOSE OF BRIDGING VISAS**

Mr Khandakar held a student visa which was cancelled in March 2007 for non-compliance with a visa condition. He unsuccessfully lodged a series of applications seeking new student visas. In May 2010 he applied for a bridging visa. At that time, he had also commenced a proceeding in the High Court under s.75(v) of the Constitution in relation to a decision to refuse to accept a student visa application. Those proceedings were commenced in April 2010, outside the specified time limit

in s.486A(1) of the *Migration Act 1958*. Accordingly, Mr Khandakar also sought orders enlarging time, to the extent necessary, to permit him to commence proceedings for substantive relief. The MRT affirmed the decision to refuse to grant the bridging visa on the basis that the visa applicant had not 'applied for judicial review' as required by the visa criterion in cl.050.212(4)(a) in Schedule 2 to the Migration Regulations 1994. In reaching its decision, the Tribunal found that as the application to the High Court was seeking orders to permit the applicant to commence proceedings, it was only if the Court granted those orders that he could be said to 'have applied for judicial review'. Upholding the Federal Magistrates Court orders to quash the MRT decision, the Full Court of the Federal Court held that the High Court application satisfied the requirement that the visa applicant had applied for 'judicial review of a decision in respect of a substantive application'. The Court held that the criterion should not be given an overly technical construction that required reading it as though only a 'competent' application or one that was not precluded by s.486A or 477(1) would be sufficient. [MIAC v Khandakar [2011] FCAFC 22]

### **MRT – COMMENT OR RESPONSE TO ADVERSE INFORMATION**

Saba Bros Tiling Pty Ltd sought approval for a nomination of a position under the Employer Nomination Scheme. The application had been refused by a delegate of the Minister in October 2008 on the basis that Saba Bros had been issued with a sanction notice in August 2008 under section 140J of the *Migration Act 1958* which barred the company from nominating a person or activity for three months. In January 2010, in the course of reviewing the delegate's decision, the

MRT invited the company under section 359A of the Migration Act to comment on, or respond to, information that would be the reason or part of reason for affirming the decision under review. The information was the existence of the sanction. On the last day for response the company's solicitors wrote to the MRT stating "We have put the adverse information to our client; however we are instructed that he would still like the opportunity of an oral hearing". The MRT did not regard the letter as a 'comment' or 'response' and found that under sections 359C and 360 of the Migration Act, the company had lost its right to an oral hearing. In its decision the MRT acknowledged that the period of the sanction had passed, and the application could not be refused on that basis, but was not satisfied the company otherwise met the criteria for approval. On appeal, the Federal Court held that the MRT was wrong to conclude that the solicitor's letter did not constitute a 'response' for the purpose of section 359A. The Court stated that a response does not require substantive remarks or observations; any reply or answer directed to the information itself will constitute a response. The Court also observed that as the sanction had lapsed at the time of the MRT's invitation, it was not rationally capable of being seen as 'information' which might be the reason or a part of the reason for affirming the decision under review. [*MIAC v Saba Bros Tiling Pty Ltd* [2011] FCA 233]

### **MRT – LOSS OF HEARING ENTITLEMENT**

Mr Kumar's student visa was cancelled by a delegate of the Minister for non-compliance with a visa condition. He sought review of that decision by the MRT. In April 2010 the MRT invited Mr Kumar to comment on, and provide

information under sections 359A and 359 of the *Migration Act 1958*. Shortly after, and before the time for response had passed, the MRT invited Mr Kumar to attend a hearing. However, that invitation was later withdrawn by the MRT as no response to its April request for information had been received within the time specified. Referring to sections 360(3) and 363A, the MRT found Mr Kumar had lost his entitlement to appear before the Tribunal. On judicial review, the Federal Magistrates Court held the MRT had erred in finding it was required to cancel the hearing. The Court held that sections 360(3), 359C and 363A read in combination were a punitive restriction on a fundamental element of the review process and as such should be interpreted strictly. While the Tribunal would be prevented from issuing a further hearing invitation after an applicant had failed to respond to an invitation to comment on or provide information, it was not required to cancel a hearing to which an applicant had already lawfully been invited. [*Kumar v MIAC & Anor* [2010] FMCA 614].

Mr Giri sought review by the MRT of a decision to cancel his student visa. In September 2010, the MRT invited Mr Giri to comment on adverse information under section 359A. Before the time for response had passed, the MRT invited Mr Giri to a hearing. That hearing was subsequently cancelled by the MRT after Mr Giri failed to respond to the section 359A invitation. The MRT affirmed the decision under review. On review, the Federal Magistrates Court declined to follow *Kumar v MIAC & Anor* [2010] FMCA 614, concluding that even though the hearing invitation had been issued prior to Mr Giri's failure to comply with the section 359A invitation, once he failed to respond, the operation of

section 360(3) then attracted the express terms of section 363A, with the effect that the MRT did not have power to permit Mr Giri to appear at a hearing. [*Giri v MIAC* [2011] FMCA 282]

### **MRT – VALIDITY OF INDEPENDENT EXPERT OPINIONS IN DOMESTIC VIOLENCE MATTERS**

Mr Maman applied for a Subclass 801 Partner visa on the basis of his marriage to an Australian citizen. In 2007, Mr Maman advised the Department of Immigration that he had been subjected to domestic violence by his partner and that processing of his visa application should proceed on the basis of him satisfying the domestic violence visa criteria. A delegate of the Minister refused the application and Mr Maman sought review by the MRT. The MRT requested an 'independent expert opinion' under regulation 1.23(10)(c) of the Migration Regulations 1994 as to whether the Mr Maman had suffered the alleged domestic violence. It provided the expert with a letter received in confidence from Mr Maman's spouse. The independent expert formed an opinion that the applicant was not a victim of domestic violence, and referred in that report to the claims made by the spouse in the letter. The Tribunal invited Mr Maman to comment on the opinion and, in response, the applicant requested a new independent expert's report on the basis that, among other things, the matters raised in the letter from the spouse had not been put to him for comment. The Tribunal did not grant that request and proceeded to affirm the delegate's decision on the basis of the expert's opinion. Quashing the MRT decision, the Federal Magistrates Court held that the MRT failed to give appropriate consideration as to whether the expert opinion was properly made.

The MRT was required, in assessing whether the opinion was properly made, to consider whether or not the applicant had been afforded procedural fairness by the expert. [*Maman v MIAC* [2011] FMCA 462]

### **MRT – 'TIME OF APPLICATION' CRITERIA**

Mr Habib applied for a Skilled (Provisional)(Class VC) visa in March 2008. A delegate of the Minister refused the visa on the grounds that Mr Habib did not have 'competent English' as there was no evidence of him achieving the necessary International English Language Testing System (IELTS) test results either before or after making the visa application. During the course of the MRT review, the applicant re-sat the test, and presented evidence to the MRT that he had achieved the required score. Despite this, the MRT affirmed the decision, on the basis that the applicant did not satisfy clause 485.215(b) or (c) of Schedule 2 to the Migration Regulations 1994, as he had not provided evidence of competent English at the time of application (clause 485.215(b)), and his application was not accompanied by evidence that he had made arrangements to undergo a language test as required by clause 485.215(c). The Federal Magistrates Court held that the MRT had erred by refusing to take into account the applicant's IELTS test results. Applying the High Court's decision in *Berenguel v MIAC* [2010] HCA 8, the Court held that the 'time of application' language test criterion found in clause 485.215(b) could be satisfied by an English language test sat at any time, including after the visa application was made. [*Habib v MIAC* [2010] FMCA 450]

Ms Rai applied for a Skilled (Provisional)(Class VC) visa. The visa was refused by a delegate of the Minister, and that

decision was affirmed by the MRT. The MRT found that Ms Rai did not meet clause 485.214 of Schedule 2 to the Migration Regulations 1994 because at the time of visa application she had not applied for an assessment of her skills by a relevant assessing authority. It also found that she did not meet the corresponding 'time of decision criterion' in clause 485.221. The Federal Magistrate Court dismissed an application for judicial review, although it noted that the MRT erred in its interpretation of clause 485.214. Applying *Berenguel v MIAC* [2010] HCA 8, the Court observed that the 'time of application' criterion could be satisfied at any time until the time of decision. [*Rai v MIAC & Anor* [2010] FMCA 472]

Mr Patel applied for a Skilled (Provisional)(Class VC) visa in December 2007. The visa was refused by a delegate of the Minister on the basis that he did not meet clause 487.213 of Schedule 2 to the Migration Regulations as he was not nominated by a State or Territory government agency. Shortly thereafter, the applicant was advised by the Murray Regional Development Board, a State Government agency, that he had been nominated by the agency. On review, the Tribunal affirmed the delegate's decision finding that, although the applicant was now nominated by a relevant agency, he was not nominated 'at the time of application' as required by the visa criterion. The Federal Magistrates Court agreed. Distinguishing the High Court matter of *Berenguel v MIAC* [2010] HCA 8, the Court held that clause 487.213 could not be satisfied by a nomination made after the visa application was made. [*Patel v MIAC & Anor* [2010] FMCA 848].

Mr Gill applied for a Skilled (Residence) (Class VB) visa in January 2008. A delegate of the Minister refused the application and that decision was affirmed by the MRT on the basis that Mr Gill did not satisfy clause 885.215 as his visa application was not accompanied by evidence that he had made arrangements to undergo a medical examination. The MRT found that arrangements that were made during the course of the tribunal review did not satisfy the criterion. The Federal Magistrates Court agreed. Distinguishing *Berenguel v MIAC* [2010] HCA 8, the Court held that the purpose of the clause could only be achieved if it were understood to apply at the time of application, not at any time afterwards. [*Gill v MIAC* [2010] FMCA 587].

## SOCIAL JUSTICE AND EQUITY

The tribunals' Service Charter expresses our commitment to providing a professional and courteous service to review applicants and other persons with whom we deal. It sets out general standards for client service covering day to day contact with the tribunals, responding to correspondence, arrangements for attending hearings, the use of interpreters and the use of clear language in decisions. A review of the Service Charter was undertaken and a revised version published in April 2011. In reviewing the Service Charter, the tribunals have undertaken extensive stakeholder consultation.

Table 3.3 – sets out the tribunals' performance during the year against service standards contained in the Service Charter.

**TABLE 3.3 – REPORT AGAINST SERVICE STANDARDS**

Service standard	Report against standard for 2010–11	Outcome
1. Be helpful, prompt and respectful when we deal with you	Members and staff attended induction training emphasising the importance of providing quality service to clients.	Achieved
2. Use language that is clear and easily understood	Clear English is used in correspondence and forms. Staff use professional interpreters to communicate with clients from non-English speaking backgrounds. There is a language register listing staff available to speak to applicants in their language, where appropriate.	Achieved
3. Listen carefully to what you say to us	<p>The tribunals book interpreters for hearings whenever they are requested by applicants and wherever possible accredited interpreters are used in hearings. Interpreters were used in 72% of hearings held (64% MRT and 84% RRT) in 2010–11. The tribunals employ staff from diverse backgrounds who speak more than 20 languages. Staff use professional interpreters to communicate with clients from non-English speaking backgrounds in hearings.</p> <p>The tribunals' Stakeholder Engagement Plan for 2010–11 sets out how the tribunals will engage with stakeholders and the engagement activities planned for 2010–11 and beyond. Community Liaison meetings were held twice during 2010–11 in Sydney, Melbourne, Brisbane, Perth and Adelaide.</p> <p>The tribunals have a formal complaints, compliments and suggestions process.</p>	Achieved
4. Acknowledge applications for review in writing within 2 working days	In 2010–11, an acknowledgement letter was sent within 2 working days of lodgement in more than 95% of cases.	95%
5. Include a contact name and telephone number on all our correspondence	All letters include a contact name and telephone number.	Achieved



Service standard	Report against standard for 2010–11	Outcome
6. Help you to understand our procedures	The tribunals provide applicants with information about tribunal procedures at several stages during the review process. The tribunals' website includes a significant amount of information, including forms and factsheets. Case officers are available in the NSW and Victorian registries to explain procedures over the counter or the telephone. The tribunals have an email enquiry address applicants can use to seek general information about procedures.	Achieved
7. Provide information about where you can get advice and assistance	The tribunals' website, Service Charter and application forms provide information about where applicants can get advice and assistance. Factsheet MR2: Immigration Assistance notifies applicants of organisations and individuals who can provide them with immigration assistance. The tribunals' application forms R1, M1 and M2 explain in 28 community languages how applicants may contact the Translating and Interpreting Service.	Achieved
8. Attempt to assist you if you have special needs	The tribunals employ a range of strategies to assist applicants with special needs. Our offices are wheelchair accessible and hearing loops are available for use in hearing rooms. Whenever possible, requests for interpreters of a particular gender, dialect, ethnicity or religion are met. Hearings can be held by video. A national enquiry number is available from anywhere in Australia (calls are charged at the cost of a local call – not available from mobile telephones).	Achieved
9. Provide written reasons when we make a decision	In all cases, a written record of decision and the reasons for decision is provided to the review applicant and to the Department.	Achieved
10. Publish guidelines relating to the priority we give to particular cases	Guidelines relating to the priority to be given to particular cases are published in the annual Caseload and Constitution Policy, which is available on the tribunals' website.	Achieved
11. Publish the time standards within which we aim to complete reviews	Time standards are also set out in the Caseload and Constitution Policy.	Achieved

Service standard	Report against standard for 2010–11	Outcome
12. Abide by the Australian Public Service Values and Code of Conduct (staff)	New staff attend induction training, which includes training on the APS Values and the Code of Conduct. Ongoing staff complete refresher training at regular intervals.	Achieved
13. Abide by the Member Code of Conduct (members)	All new members attend induction training which includes the Member Code of Conduct. All members complete annual conflict of interest declaration forms and undergo performance reviews by Senior Members.	Achieved
14. Publish information on caseload and tribunal performance	Information relating to the tribunals' caseload and performance in the current and previous financial years is published on the tribunals' website (under 'Statistics'). Further statistics, including those on the judicial review of tribunal decisions, are available in the tribunals' Annual Reports.	Achieved

The tribunals are particularly conscious that a high proportion of clients have a language other than English as their first language. Clear language in letters and forms and the availability of staff to assist applicants are important to ensuring that applicants understand their rights and our procedures and processes.

The tribunals' website is a significant information resource for applicants and others interested in the work of the tribunals. The publications and forms available on the website are regularly reviewed to ensure that information and advice are up-to-date and readily understood by clients.

The Service Charter is available on the website, along with the Tribunals' Plan, the Member Code of Conduct, the Interpreters' Handbook and Principal Member Directions relating to the conduct of reviews. The 'Information for Representatives' webpage is specifically aimed at supporting representatives, bringing together the most often used resources and

information. A 'Frequently Asked Questions' page answers representatives' most commonly asked questions.

The tribunals value our relations with stakeholders in the community and hold regular community liaison meetings. Our Stakeholder Engagement Plan 2010–11 sets out how we seek to understand and incorporate stakeholders' perspectives.

The tribunals have offices in Sydney and Melbourne which are open between 8.30am and 5pm on working days. The tribunals have an arrangement with the Administrative Appeals Tribunal (the AAT) for documents to be lodged and for hearings to be held at AAT offices in Brisbane, Adelaide and Perth. The tribunals also have a national enquiry number – 1300 361 969 – available from anywhere in Australia (calls are charged at the cost of a local call – not available from mobile telephones). Persons who need the assistance of an interpreter can contact the Translating and Interpreting Service (TIS) on 131 450 for the cost of a local call.

The tribunals' have a Reconciliation Action Plan which was published in April 2011. The Workplace Diversity Program was reviewed and published in April 2011. Further information about these strategies and plans is set out in Part 4.

## COMPLAINTS

As outlined above, the tribunals' Service Charter sets out the standards of service that clients can expect. It also sets out how clients can comment on or complain about the services provided by the tribunals. The Service Charter is available on the 'complaints and compliments' page on the tribunals' website.

A person who is dissatisfied with how the tribunals have dealt with a matter or with the standard of service they have received, and who has not been able to resolve this by contacting the office or the officer dealing with their

case, can forward a written complaint marked 'confidential' to the Complaints Officer. A complaints and compliments button on the homepage of the tribunals' website makes it easier for clients to make a complaint.

Alternatively, a person can make a complaint to the Commonwealth Ombudsman, although, as a general rule, the Ombudsman will not investigate complaints until they have been raised with the relevant agency.

The tribunals will acknowledge receipt of a complaint within 5 working days. A senior officer will investigate the complaint and aim to provide a written response to the complaint within 20 working days of receipt of the complaint. With the exception of 1 matter, all complaints dealt with in 2010–11 were responded to within 20 working days.

Table 3.4 sets out the number of complaints finalised over the last 3 years.

**TABLE 3.4 – COMPLAINTS**

	2010–11	2009–10	2008–09
<b>MIGRATION REVIEW TRIBUNAL</b>			
Complaints resolved	13	18	21
Cases decided	6,577	7,580	5,767
Complaints per 1,000 cases	2	2.4	3.6
<b>REFUGEE REVIEW TRIBUNAL</b>			
Complaints resolved	8	4	10
Cases decided	2,604	2,157	2,462
Complaints per 1,000 cases	3.1	1.9	4

The majority of complaints related to the conduct of the review process. Others were about the timeliness of the review or the decision. Following investigation, the tribunals formed the view that 2 of the complaints made during that year related to matters that could have been handled more appropriately.

**Case 1** – Concerns were raised in relation to the quality of the hearing recording in an RRT matter. The tribunal wrote to the complainant acknowledging the specific concerns raised, including noise generated by a keyboard used by the member to make notes during the hearing. Steps were taken to improve the quality of hearing recordings in the tribunals by rearranging the position of recording equipment; testing better quality microphones; and trialling a number of different types of keyboards.

**Case 2** – The applicant’s representative raised concern with the MRT about the significant delays in constituting the tribunal. The tribunal advised that there was a backlog of cases and that all possible steps were being taken to remedy the situation. The representative was also advised that if special circumstances existed, it was open to the applicant to request priority processing in accordance with the tribunals’ caseload and constitution policy.

Table 3.5 sets out the complaints made to the Commonwealth Ombudsman over the last 3 years and the outcomes of the complaints resolved.

## MIGRATION AGENTS

More than 61% of applicants were represented. With limited exceptions, a person acting as a representative is required to be a registered migration agent. Registered migration agents are required to conduct themselves in accordance with a code of conduct. The tribunals referred 7 matters to the Office of the Migration Agents Registration Authority (OMARA) during 2010–11 relating to the conduct of migration agents. OMARA is responsible for the registration of migration agents, monitoring the conduct of registered migration agents and investigating complaints and taking disciplinary action against registered migration agents who breach the code of conduct or behave in an unprofessional or unethical way.

## COMMUNITY AND INTERAGENCY LIAISON

The tribunals hold regular community liaison meetings to exchange information with interested stakeholders. The meetings are attended by representatives of migration and refugee advocacy groups, migration agents associations, human rights

**TABLE 3.5 – COMPLAINTS TO THE COMMONWEALTH OMBUDSMAN**

	2010–11	2009–10	2008–09
New complaints	26	19	28
Complaints resolved	24	18	32
Administrative deficiency found	0	0	1

bodies, DIAC and other government agencies. The meetings discuss the tribunals' procedures, caseloads and recent developments.

In 2010-11 the tribunals began sending monthly updates to people who attend these meetings. They include caseload reports and information on other issues of interest to community liaison members.

During Refugee Week in June 2011 the Refugee Review Tribunal held open days. The members and tribunal staff gave short presentations and conducted a mock hearing to give participants an insight into the work of the tribunal and how hearings are conducted.

The tribunals place great importance on maintaining regular contact with key stakeholders in migration, refugee and advocate organisations. The tribunals' Stakeholder Engagement Plan, *Improving Access to Justice*, was developed in May 2010 and is available on the tribunals' website.

Members and senior officers of the tribunals have continued to be active participants in several bodies, including the national and state chapters of the Council of Australasian Tribunals (COAT), the Australasian Institute of Judicial Administration (AIJA), the Australian Institute of Administrative Law (AIAL) and the International Association of Refugee Law Judges (IARLJ).

The tribunals also hold regular meetings with the Department. A Memorandum of Understanding between the tribunals and the Department reflects the statutory and operational relationships between the agencies.

In March 2011, the Principal Member gave a speech to the Law Council of Australia CPD Immigration Law Conference in Melbourne about the challenges in bringing the tribunals within mainstream administrative law. In April 2011 tribunal members attended the COAT Victoria Annual Conference "Eliciting Evidence" and in May 2011 tribunal members attended the COAT NSW Annual Conference "Being Accessible, Being Fair". In June 2011 tribunal members attended the 14th Annual AIJA Tribunals Conference "Promoting Excellence".

In March 2011, the Principal Registry in Sydney was pleased to host a visit from the Minister for Immigration and Citizenship, the Hon Chris Bowen MP. In June 2011 the Victorian Registry hosted a visit from the Parliamentary Secretary for Immigration and Citizenship, the Hon Senator Kate Lundy.

## MAJOR REVIEWS

There were no major reviews in 2010–11.

## SIGNIFICANT CHANGES IN THE NATURE OF FUNCTIONS OR SERVICES

Significant reforms were made to the *Freedom of Information Act 1982* which introduced a new Information Publication Scheme (IPS). The IPS commenced on 1 May 2011 and requires agencies to publish a broad range of information on their websites. The tribunals' Information Publication Plan is published on the tribunals' website.

## DEVELOPMENTS SINCE THE END OF THE YEAR

There have been no significant developments since the end of the year.

## CASE STUDIES

The following case studies provide an insight into the range of matters which come before the tribunals.

### MRT – REMAINING RELATIVE – SET ASIDE

The visa applicant claimed that she was divorced and, apart from her two children who were included as visa applicants, all of her other family members were Australian residents. The visa applicant submitted documents that included a copy of her divorce papers, and custody documents in relation to her children which stated that she was “at liberty to take them out of Fiji”. She claimed that her husband had started spending time away from home and that when she enquired as to his whereabouts he became abusive; thus she decided to live alone with her two children on a property owned by her parents. Based on information provided by the visa applicant’s neighbours during a Departmental site visit, the Department surmised that the visa applicant still lived with her divorced spouse. The visa applicant claimed that her ex-husband came to see his children from time to time, and that the neighbours had seen him visiting the premises and wrongly concluded that he was residing there. She provided a number of statutory declarations and letters attesting to the circumstances of the marriage breakdown, as well as to the fact that they no longer lived together.

The MRT accepted the evidence which was submitted in support of the claims. It found that it was plausible that the neighbours merely assumed that the visa applicant’s husband resided with her because they had seen him on occasions when he had visited the house to see his children. The MRT found that the applicant was not living with her former husband and, therefore, she did not have a ‘spouse’ at the time of application, nor at the time of decision. The tribunal found that the applicant had no ‘near relatives’ other than those who were resident in Australia, and that the provisions for the granting of the visa were satisfied.

### MRT – VISITOR – GENUINE VISIT – SET ASIDE

The visa applicant claimed that she had two teenage children as well as other siblings in China. She also claimed that she had a job as a manager and that she had savings to support herself in Australia, and she further claimed that the review applicant would provide her with accommodation and financial assistance during her stay. The review applicant, the visa applicant’s uncle, claimed that when he returned to China to attend his mother’s funeral last year, the visa applicant had expressed a wish to visit his family and Australia, and that she also wanted to investigate the possibility of her daughter coming here to study. The review applicant claimed that he was sure that the visa applicant would return to China

because she had two children there whom she supported financially. He claimed that this was the first time that he had sponsored a visitor to Australia in over 35 years. The visa applicant claimed that her children would be cared for by her sister-in-law, who lived next door to her in China.

The MRT considered that the visa applicant had strong personal ties to China given that her two children and other family members lived there. It accepted that her children would be cared for by her sister-in-law, that the visa applicant had employment in China, and that she owned her own home. It also noted that the visa applicant had travelled to Hong Kong on two occasions as well as to Macau, and that she had returned home after each of these visits. The MRT was therefore satisfied that the visa applicant's intention only to visit Australia was genuine.

### **MRT – PARTNER – GENUINE RELATIONSHIP – SET ASIDE**

The visa applicant claimed that she met the review applicant in May 2008, began a relationship, and married in August 2009. The visa applicant claimed that when she first saw the review applicant, she asked his aunt, her neighbour, for his phone number. She claimed that he did not want her to tell anyone about their relationship because he had to return to Australia. After he returned, the visa applicant claimed that they began emailing each other, and that their relationship grew. She claimed that when he returned to Macedonia, they met each other's families and were married; however, they did not live together as they wanted to begin their married life together in Australia.

The applicants provided extensive evidence in support of their claims, including several statutory declarations from friends and relatives, evidence of the review applicant's further travel to Macedonia in July 2010 and his return to Australia in January 2011, and evidence of money transfers in 2009-10. The representative claimed that the review applicant's acquaintance with the visa applicant was typical of his conservative Macedonian culture. He claimed that initially only close family were aware of the relationship because it was culturally inappropriate for the parties to be seen together if they were not an 'official' couple.

The MRT noted that it had the benefit of a substantial amount of evidence which was provided subsequent to the delegate's decision, and it gave significant weight to the social aspects of their relationship, including their marriage, the acceptance of the visa applicant by the review applicant's family, and the nature of the parties' commitment to each other. Accordingly, it was satisfied that the applicants had a relationship that was genuine and continuing.



### **MRT – BUSINESS – STANDARD BUSINESS SPONSOR – NOMINATION REFUSAL – AFFIRMED**

The applicant, Andritz Pty Ltd (Andritz), was an approved Standard Business Sponsor. The applicant's representative submitted that Andritz had been contracted to undertake a project as part of a Tasmanian pulp mill project, and that it had successfully sponsored a Subclass 457 visa applicant in the critical role of Construction Project Manager. In light of the changes to the Regulations which introduced r.2.72 to replace r.1.20H, the applicant was invited to provide information about the nominated occupation of 'nanny', and whether it was a position with the business or an occupation specified by the Minister in the relevant instrument in writing. The applicant argued that the changes did not apply. Andritz nominated the occupation of 'nanny' for the benefit of the Subclass 457 visa holder's children, who had accompanied her to Tasmania. Andritz' representative stated that the 'nanny' was to care for the children's distance education in their first language, Portuguese, and this was critical to the visa holder's role in the Tasmanian project. The representative's submission highlighted the connection between the roles of the nanny and the Construction Project Manager, as part of a larger project involving significant investments which was expected to produce economic benefits to the Tasmanian economy; thus, there were exceptional and unique circumstances that would make it appropriate to refer the matter to the Minister under s.351 of the Act.

The tribunal found that the nominated occupation of 'nanny' did not correspond to an occupation listed in the relevant instrument in writing for this purpose. The tribunal did not accept the representative's argument that the changes of 14 September 2009 did not apply so as to remove the availability of the nominated occupation for the purpose of an application made prior to this date, and it noted that the amendments made clear that the changes applied to applications not finally determined. Accordingly, the tribunal found that r.2.72 was not met and the nomination could not be approved. The tribunal further noted that the Tasmanian pulp mill project was valued at approximately \$200 million, and that it was expected to add \$6.7 billion to the Tasmanian economy and create hundreds of jobs. It therefore supported a referral of the matter to the Minister.

### **MRT – STUDENT – FRAUDULENT DOCUMENTS – AFFIRMED**

In the visa applicant's original visa application, she claimed and provided evidence through her agent in India that her parents were doctors, and that they had sufficient funds to support her study and stay in Australia. Evidence of funds provided included term deposits and other financial statements in her parents' names. After lodging an application for a further student visa, financial documents were referred to the Australian High Commission in New Delhi for verification, and the documents were assessed

as non-genuine. Further investigations revealed that the purported parents of the visa applicant were non-resident Indians, with one of the doctors advising when contacted that he did not know the visa applicant, and that he had never sponsored anyone for a visa. The visa applicant claimed that she had initially expressed concerns to her migration agent about her inability to show funds, and that he had promised to assist her and would see to it that funds were arranged, although he did not divulge any further details. The visa applicant claimed that she was committed to her studies, and that the visa cancellation would cause her significant hardship, as her husband and two children in India suffered from health issues, and that it would be impossible for them to survive on a single income. The tribunal sought further information from the agent in India, who submitted a copy of the Visa Declaration Form, which showed that the financial details had been filled in by the visa applicant.

The MRT found that the visa applicant had been truthful about the status of her financial resources, and that although she was unclear as to her full knowledge of how the fraudulent conduct had occurred, she knew that she could not obtain the visa based on the correct information. The RRT noted that the degree to which she may have been compliant or not was not relevant, because fraudulent conduct by *any* person, including the agent, had occurred. It was therefore satisfied that the grounds for cancellation of the visa existed. The MRT found that the studies she had already undertaken in Australian education would be of benefit in furthering her opportunities in India, and that her children would not be impacted in an adverse manner if she returned to be with them. The tribunal, therefore, did not consider that there were mitigating, compassionate, compelling or extenuating circumstances that outweighed the grounds for cancelling the visa.

### **RRT – AFGHANISTAN – HAZARA – SET ASIDE**

The applicant was a female infant born in Australia. Her parents were Afghan nationals who had arrived by boat in 2010, and their asylum claims had been rejected and were under review by the Independent Protection Assessment Office. The applicant's father claimed that he had been attacked by a warlord, and that subsequent attempts were made by men, whom he believed to be the warlord's associates, to kidnap him. He claimed that these events occurred due to an incident when he was loading trucks for the Wahdat (Nasr) Party with goods which the warlord claimed belonged to his relatives. The applicant's father claimed that the applicant was extremely vulnerable as a Hazara Shia who was born abroad, claiming that she would be unable to obtain Afghan citizenship and that she would face the same discrimination and constant threat to her life as other Hazaras in Afghanistan. He claimed that as a female child she would be subject to systemic discrimination by being denied access to basic services such as education and health, and that she would eventually be killed by the Taliban

as Hazaras were a minority group who were targeted and vulnerable, and that the authorities in Afghanistan were weak and could not protect her.

The RRT considered that the applicant's mother's evidence was especially telling in her description of the dangers to her in leaving the house unless she was wearing a burqa and was accompanied by her husband. The RRT accepted independent information which indicated that ethnic Hazaras were still being targeted and murdered by the Taliban, and that children may be kidnapped by the Taliban and made the subject of ransom demands. It also found that schoolgirls in particular had been the focus of Taliban attacks. The RRT was therefore satisfied that there was a real chance that, both for the present and the reasonably foreseeable future, the applicant would suffer serious harm at the hands of the Taliban for reason of her Hazara ethnicity and her Shia religion, and that persecution against her would be widespread throughout Afghanistan.

### **RRT – ZIMBABWE – MOVEMENT FOR DEMOCRATIC CHANGE – AFFIRMED**

The applicant claimed she left Zimbabwe in 2006 to study overseas, as she did not wish to continue watching her family being harassed. She claimed that she feared being tortured, raped, beaten or killed by government officials because of past harassment towards various family members. The applicant claimed that her mother was active in politics and was a member of the Movement for Democratic Change (MDC), and she further claimed that her uncle was a journalist who criticised the government and had subsequently been imprisoned, before fleeing to South Africa, where he was granted asylum. The applicant claimed that she would be considered an MDC activist as her family had been placed on the Central Intelligence Organisation's (CIO) hit list. She claimed that during a visit home in 2007, the CIO had forcibly entered the family home, where she had been beaten, detained, and questioned about her uncle's whereabouts. The applicant claimed that during the presidential elections in 2008, her sister had been picked up by the CIO and her body found a week later. She claimed that other relatives had also been murdered or beaten.

The RRT did not find the applicant to be a credible witness in terms of critical aspects of her claims. It did not accept the applicant's claims regarding her mother's MDC membership, or that her sister was politically active, murdered or dead. The RRT considered it implausible that, after the CIO incident, the applicant would have holidayed in Victoria Falls, visited her uncle in South Africa and then returned to Zimbabwe. The RRT also found the fact that she had returned to Zimbabwe in 2007, and had planned to return again in 2008, was an indication that she did not have a fear of harm.

The RRT noted independent information which confirmed that the applicant's uncle had written openly critical articles about the government and had fled Zimbabwe, but that he had recently been prepared to re-enter Zimbabwe to speak publicly with Zimbabwe African National Union – Patriotic Front (ZANU-PF) and MDC officials. Therefore, the RRT was not satisfied that the applicant faced a real chance of persecution if she returned to Zimbabwe, now or in the reasonably foreseeable future.

### **RRT – UGANDA – FEMALE MEMBER OF THE SABINY TRIBE – SET ASIDE**

The applicant claimed to be born in Uganda and a member of the Sabiny tribe. She claimed that her father was deceased, and that she was bound by the authority of her paternal uncles. The applicant claimed that, in 2002, two of her paternal uncles had contacted her mother to advise that the applicant should return to her village to undergo Female Genital Mutilation (FGM), a cultural requirement for all female members of the Sabiny tribe. Consequently, her mother sent her to boarding school for her protection, as she believed that the applicant would be safe from her uncles there. The applicant claimed that, in 2010, her uncles instructed her mother to bring the applicant to a cutting ceremony to prepare her for marriage to a local witchdoctor that they had chosen for her. The applicant claimed to be Christian and in fear of her prospective husband, given witchdoctors' reputation for sacrifice and disapproval of Christianity. She claimed that, as she was by this time attending university, she would easily be found by her uncles given the availability of university enrollments on the internet. Although the practice of FGM was illegal in Uganda, the applicant did not believe that the Ugandan authorities could or would protect her, as this law was not enforced by state authorities. Furthermore, there was also no law in Uganda which prohibited forced marriage.

The RRT found the applicant to be a credible witness, whose evidence accorded with independent information, and it accepted her claims. The RRT noted that the independent information confirmed that FGM exposed a woman to health hazards, including excessive bleeding, death, birth complications and exposure to illnesses; that it was routinely practised within the Sabiny tribe; and that all Sabiny women were expected to be subjected to FGM. Independent information also indicated that a Sabiny man would expect his betrothed to be subjected to FGM prior to their marriage, and that forced marriage remained common amongst Sabiny tribe members. The RRT accepted that there was a real chance that if the applicant returned to Uganda, she would be subjected to FGM and be forced to marry a man who might physically mistreat her due to her Christianity. The RRT considered that the treatment she feared involved serious harm, that legislation outlawing the practice of FGM had not stopped the practice, and it therefore found that the level of state protection was not effective.

Therefore, the RRT was satisfied that the applicant had a well-founded fear of persecution.

### RRT – CHINA – LOCAL CHURCH – SET ASIDE

The applicant claimed that she came from a family of devout Christians who were active members of the Local Church. She claimed that she and a school classmate regularly attended meetings of the church, and that they would sometimes secretly distribute religious material at their school, converting a fellow student in the process. The applicant claimed that her father was arrested by the Public Security Bureau (PSB) for conducting illegal church gatherings and evangelising, receiving a sentence of 12 months re-education through labour. She claimed that the PSB subsequently visited her at home and that she was arrested and accused of distributing religious material on school premises, physically mistreated by the police, and held in a detention centre for two weeks. The applicant claimed that on release she was able to obtain a passport by bribing the authorities, but that after her departure to Australia her fellow classmate whom she had helped to convert had become disillusioned with the church as he felt that she had abandoned him. She claimed that she began to communicate with him, encouraging him to pray and sending him various articles, which resulted in him returning to the church. The applicant claimed that he began distributing this material to other church members, resulting in the arrest of three fellow churchgoers. She claimed that they confessed the origin of the material to the authorities, and that the applicant's parents were questioned on a number of occasions and advised her not to send further material.

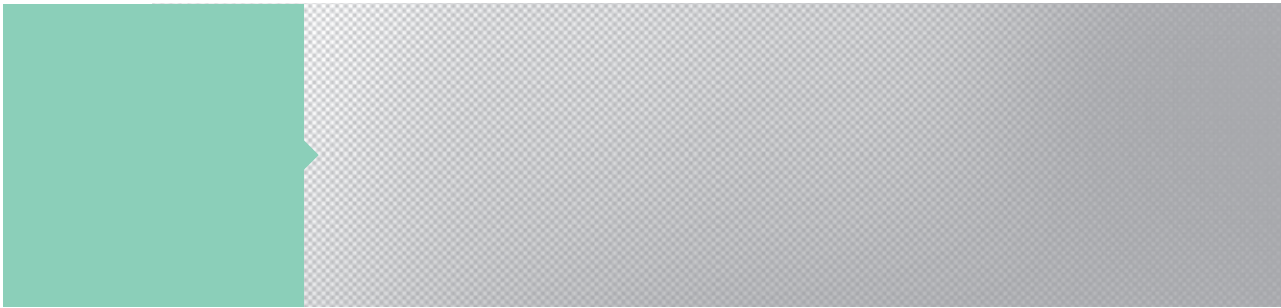
The RRT accepted that the applicant came from a devout Christian family who were active members of the Local Church. It found that the applicant was able to give a cogent account of her Christianity, and that she demonstrated an ability to discuss her beliefs with confidence. The RRT accepted that the applicant's father had organised a gathering which was raided by police and resulted in his arrest. The RRT further accepted that the authorities found some Local Church pamphlets at the applicant's school, which had resulted in her being detained, and that she had subsequently sent her former classmate Christian literature which was distributed to other church members, resulting in the arrest of three colleagues. The RRT noted independent information which indicated that the Chinese authorities tended to become more concerned about underground church activities when proselytising to the young was involved, and that given the applicant's strong commitment to her faith and her readiness to express her political opinion critical of the authorities, it considered that there was a real chance that she would encounter harm capable of amounting to persecution for reasons of her religion should she return to China.

### RRT – EGYPT – COPTIC CHRISTIAN – AFFIRMED

The applicant claimed that he was a committed Coptic Orthodox Christian, whose religious activities included preaching, attending church meetings and religious rallies, and the distribution of religious material. He claimed that he feared he would be targeted by radical Islamists who opposed proselytising to Muslims, and that he would not be able to rely on the protection of the Egyptian authorities. The applicant claimed that he had attended the Coptic Church on a weekly basis in Egypt, and that he also went to an Evangelical Church near his village to preach. He claimed that on one occasion a Muslim came up to him, asked what he was doing, and accused him of spreading the word of Christ. He claimed that other Christians got involved, and that he and his cousin were reported, and his cousin was subsequently sentenced. The applicant claimed that he was unable to leave his home village after this incident, and that his cousin had later been killed. He claimed that he had been active in the church since coming to Australia, and that he had also attended a protest against the treatment of Copts in Egypt.

The RRT accepted that the applicant was Coptic Christian on account of his supporting documentation from a Priest, and the fact that he lived in Coptic Christian accommodation. The tribunal further accepted that he attended the Coptic Church because of a genuine religious belief, and not for the purpose of strengthening his claim to be a refugee; however, it did not accept that he was an Evangelical Christian or a preacher, noting that he was unable to say in any detail where this church was located. The RRT found that the applicant's accounts of his preaching activities in Egypt and Australia were vague and lacking in detail, noting that whilst he claimed that he had come to Australia to preach, he did not approach an Evangelical Church until he had been in Australia for more than 18 months. The RRT did not accept that the applicant had experienced any harm amounting to persecution because of his religion, noting that his original application stated that he had not previously been targeted, and it further noted that despite his claim that he and his cousin were confronted by Muslims, and that he was consequently too fearful to leave his village, he had also claimed to have visited his brothers in Cairo during this time, and to have visited the Evangelical church outside his village. Whilst the RRT accepted that Coptic Christians in Egypt may face discrimination and even more serious harassment depending on individual circumstances, it was not satisfied that the applicant had been targeted in this way either by the authorities, radical Islamists, or Muslims generally, and it therefore found that he was not entitled to the grant of a protection visa.







# MANAGEMENT AND ACCOUNTABILITY

TO PROVIDE VISA APPLICANTS AND SPONSORS WITH INDEPENDENT, FAIR, JUST,  
ECONOMICAL, INFORMAL AND QUICK REVIEWS OF MIGRATION AND REFUGEE DECISIONS

# PART 04

# MANAGEMENT AND ACCOUNTABILITY

The tribunals' policies, practices and structure have been designed with sound corporate governance principles in mind. This Part sets out what the tribunals have done to ensure that appropriate management and planning processes are in place.

## SENIOR MANAGEMENT

Mr Denis O'Brien is the Principal Member of the tribunals. He was appointed from 3 September 2007 for a term to 30 June 2012.

Sections 397 and 460 of the *Migration Act 1958* provide that the Principal Member is 'the executive officer' of the tribunals and is responsible for their overall operation and administration, including 'monitoring the operations' of the tribunals 'to ensure that those operations are as fair, just, economical, informal and quick as practicable'. Sections 353A and 420A provide that the Principal Member may give written directions as to the operation of the tribunals and the conduct of reviews by the tribunals.

Ms Amanda MacDonald was appointed as the Deputy Principal Member of the MRT and RRT from 1 April 2010. The Deputy Principal Member's responsibilities include members' professional development and community liaison arrangements.

Senior Members of the tribunals provide leadership and guidance to members.

The Senior Members are Mr John Billings (Vic), Mr John Cipolla (NSW), Ms Linda Kirk (Vic), Mr Peter Murphy (Vic), Ms Kira Raif (NSW), Mr Shahyar Roushan (NSW), Mr Giles Short (NSW) and Mr Don Smyth (Qld).

Sections 407 and 472 of the Act provide that the Registrar, the Deputy Registrar and other officers of the tribunals have such duties, powers and functions as are provided by the legislation, and such duties and functions as the Principal Member directs. Mr Colin Plowman is the Registrar and Mr Rhys Jones is the Deputy Registrar.

The governance framework for the tribunals includes:

- A Management Board, consisting of the Principal Member, the Deputy Principal Member, the Registrar, the Senior Members and the Deputy Registrar. The Board meets monthly.
- A Senior Management Group (SMG), comprising the Registrar, the Deputy Registrar and senior managers. The SMG meets monthly and deals with management and planning issues.
- The Registrar is the general manager of the tribunals' operations and also the chief financial officer. He is assisted by the Deputy Registrar.
- An Audit and Risk Management Committee oversees the engagement and work program of the tribunals' internal auditors and considers issues relating to risk management.



The Management Board. From left to right, standing, Deputy Principal Member Amanda MacDonald, Senior Member John Cipolla, Registrar Colin Plowman, Senior Member Peter Murphy, Senior Member Don Smyth, Senior Member Linda Kirk, and seated, Deputy Registrar Rhys Jones, Senior Member Giles Short, Principal Member Denis O'Brien, Senior Member Kira Raif and Senior Member Shahyar Roushan. Senior Member John Billings was interstate on the day the photograph was taken.

## CORPORATE AND OPERATIONAL PLANS

The operations of the tribunals are funded through annual appropriations made by the Australian Parliament. Portfolio Budget Statements are prepared bi-annually and set out the proposed appropriations to Government outcomes. The budget statements identify a single outcome for the tribunals: To provide correct and preferable decisions for visa applicants and sponsors through independent, fair, just, economical, informal and quick merits reviews of migration and refugee

decisions. The budget statements include performance indicators, and a report against them is set out in Part 3 of this Report.

The Tribunals' Plan 2011–13 states that the tribunals' reputation depends on professional, effective and courteous dealings with applicants and their representatives and on the quality, integrity, consistency and timeliness of our decision-making. The independence of members in decision-making, the quality of decision-making and the publication of decisions and other information are vital to retaining respect

and credibility in relation to tribunal review processes and decisions.

The tribunals strive to maintain a culture that is respectful of people with whom we deal, and to make decisions which achieve the correct or preferable outcome irrespective of representation or language, cultural or other barriers.

Maintaining a reputation for delivering consistent, high quality and timely reviews continues to be fundamental to the tribunals' success.

The Tribunals' Plan is available on the tribunals' website.

The tribunals' caseload and constitution arrangements are set out annually in a Principal Member Direction. This Direction sets out operational strategies which take into account current and anticipated caseloads and the priorities to be given to cases.

All tribunal sections have business plans.

## ETHICAL STANDARDS

Members are required to act in accordance with a Member Code of Conduct and staff are required to act in accordance with the Australian Public Service (APS) Values and APS Code of Conduct.

All members sign a performance agreement. The agreement requires that a member will act in accordance with the principles set out in the Member Code of Conduct. The Code provides that members should behave with integrity, propriety and discretion, and should treat applicants, representatives, interpreters and other persons with respect, courtesy and dignity.

The Member Code of Conduct is available on the tribunals' website.

## RISK MANAGEMENT

The tribunals have in place an audit and risk management framework including an Audit and Risk Management Committee (ARMC) comprising an independent chair and senior tribunal representatives. Representatives from the Australian National Audit Office (ANAO) and from Deloitte Touche Tohmatsu, in their capacity as the provider of internal audit services to the tribunals attend to assist the ARMC. The role of the ARMC is to consider matters that it deems appropriate and which relate to the financial affairs and risk management issues of the tribunals and matters referred to it by the Management Board.

During the year, the Australian Federal Police concluded a review of the agency Security Plan and the tribunals' Internal Auditors concluded reviews of the payroll, finance, registry cash handling, Certificate of Compliance reporting and IT security functions as part of a three year Internal Audit Plan.

During the year, the tribunals' also developed an Audit and Risk Management Plan and updated the Financial Delegations and Chief Executive Instructions (CEIs).

The tribunals' business continuity plan is supported by memoranda of understanding with the Department and with other federal merits review tribunals (the AAT, the SSAT and the VRB) to provide assistance to each other in the event of a disruption to services or facilities.

## EXTERNAL SCRUTINY

The tribunals are subject to external scrutiny through the publication of decisions and country advice, judicial review by the courts, Annual Reports to Parliament, appearances before Parliamentary Committees, complaints to and enquiries by the Commonwealth Ombudsman and reports and enquiries by the ANAO and other bodies. The tribunals interact with agencies including the ANAO on compliance issues, and closely monitor Parliamentary Committee reports and other reports across the public sector.

Section 440A of the Migration Act requires the Principal Member to give the Minister for Immigration and Citizenship a report every 4 months on the conduct of RRT reviews not completed within 90 days and requires the Minister to table these reports in Parliament.

## WHOLE OF GOVERNMENT REFORMS

The tribunals undertook a range of activities in relation to whole of government reforms during the year. Extensive work was undertaken in relation to the Information and Communications Technology Review (the ICT review). The work included identifying savings proposals, developing reinvestment proposals, identifying quick green “wins” in areas such as energy use and meeting the detailed ICT reporting requirements. The tribunals also developed a P3M3™ Capability Improvement Plan.

In relation to whole of government procurement arrangements, the tribunals:

- have joined the Microsoft Volume Sourcing Agreement
- have procured replacement desktop computers through whole of government arrangements co-ordinated by the Australian Government Information Management Office (AGIMO)
- have procured replacement multi-function devices through whole of government arrangements for Major Office Machines coordinated by the Department of Finance and Deregulation
- have liaised with the assigned lead agency towards participation in the internet gateway reduction process
- are included in a cluster arrangement covering travel with the Department of Immigration and Citizenship
- have joined whole of government telecommunications arrangements for mobile carriage and are exploring the use of telecommunications arrangements for fixed voice and data in 2011–12.

Consistent with Commonwealth Property Management Guidelines, the tribunals have provided detailed data for the Australian Government Property Data Collection (PRODAC) and are developing a property management plan.

## EXTERNAL SCRUTINY

There were no major reviews or reports on the tribunals operations during the year.

## HUMAN RESOURCES

The tribunals comprise members (appointed under the Migration Act) and staff (appointed under the Migration Act and employed under the *Public Service Act 1999*).

The tribunals recognise that it is through our members and staff that we achieve the tribunals' objectives and the outcomes expected by Government. The tribunals seek to create an environment where members and staff are supported and encouraged to be professional and courteous, to deliver quality services, to uphold values and codes of conduct and to contribute to organisational improvements.

The tribunals are committed to providing a workplace that:

- values diversity and the contributions made by people
- encourages ethical and good workplace behaviour
- is productive, professional and delivers quality and timely service
- identifies and addresses health and safety issues

- supports members and staff to balance work with their family and community responsibilities and lifestyle choices.

The work of the tribunals is recognised as important, challenging and stimulating. Remuneration and conditions are commensurate with responsibilities.

## MEMBERS

Members are appointed by the Governor-General for fixed terms on a full-time or part-time basis. The remuneration of members is determined by the Remuneration Tribunal, and their terms and conditions of employment (not including remuneration) are determined by the Minister for Immigration and Citizenship. The Remuneration Tribunal's determinations are available on its website at [www.remtribunal.gov.au](http://www.remtribunal.gov.au).

Persons appointed as members have typically worked in a profession or have extensive experience at senior levels in the private or public sectors. Many have legal qualifications. The work is suited to working on a part-time basis and more than 59% of members are part-time.

The membership as at 30 June 2011 is set out in Table 4.1.

**TABLE 4.1 – MEMBERSHIP AS AT 30 JUNE 2011**

	Women	Men	Total
Principal Member	0	1	1
Deputy Principal Member	1	0	1
Senior Members	3	4	7
Full-time members	11	16	27
Part-time members	39	14	53
<b>Total</b>	<b>54</b>	<b>35</b>	<b>89*</b>

\* Includes 1 full-time Senior Member and 2 full-time members on leave of absence to the Independent Protection Assessment Office (IPAO), and 5 part-time members working on IPAO matters.

The selection processes for new members are undertaken in accordance with the Australian Public Service Commission's *'Merit and Transparency: merit-based selection of APS agency heads and statutory office holders'* guidelines. 17 new members (8 full-time and 9 part-time) were appointed from 1 July 2010. A further selection process commenced in November 2010 which resulted in 27 appointments on 1 July 2011 for a term of 5 years. The appointments consisted of 5 Senior Members including 4 existing members who were appointed as Senior Members, 10 full-time members and 12 part-time members.

The membership as at 1 July 2011 is set out in Table 4.2.

A list of members and their appointment periods as at 1 July 2011 is available in Appendix 1 of this Report. Member biographies are available on the tribunals' website.

## MEMBER PROFESSIONAL DEVELOPMENT AND PERFORMANCE

The tribunals' membership is highly competent and professional and is supported by legal, research and administrative staff and a program of continuing professional development. All members sign a performance agreement and the Principal Member and Senior Members conduct annual performance reviews. The quality of decisions, the timeliness of reviews, productivity and participation in professional development and mentoring activities are all taken into account.

A new member performance review and assessment process was implemented in January 2011. The objectives of the process are to enhance the performance of the tribunals by assisting members and Senior Members to assess their performance against a framework of competencies; identify good practice and areas for further learning or development; create opportunities for members to raise issues relating to their experience in conducting reviews;

**TABLE 4.2 – MEMBERSHIP AS AT 1 JULY 2011**

	Women	Men	Total
Principal Member	0	1	1
Deputy Principal Member	1	0	1
Senior Members	3	6	9
Full-time members	15	21	36
Part-time members	48	17	65
<b>Total</b>	<b>67</b>	<b>45</b>	<b>112*</b>

\* Includes 1 full-time Senior Member and 2 members on leave of absence to the Independent Protection Assessment Office (IPAO), and 5 part-time members working on IPAO matters.



maintain standards and consistency of practice; and provide direction for the member professional development program.

In May 2011 a preliminary review of the member performance review and assessment process was conducted. Members who undertook performance review under the new process commented on the advantages of the new performance review process in considering different aspects of members' performance and in supporting members to maintain and improve performance.

On appointment, although experienced in other fields, members do not necessarily have detailed knowledge of migration or refugee law or in the conduct of hearings. New members are provided with induction training supported by a program of mentoring and further training over several months.

The tribunals engaged a Member Professional Development Director for a period of 6 months. The Member Professional Development Director worked with the tribunals' Member Professional Development Committees to set the strategic direction for member professional development, to define priorities for investment in professional learning and to ensure the delivery of targeted quality professional development contextualised to member needs.

The tribunals' National Member Professional Development Committee worked to ensure that members had access to relevant and high quality development activities which would enhance the quality of the tribunals' decision making. The committee had responsibility for the national member

conference and new member induction programs. Chaired by the Deputy Principal Member and comprising the Principal Member, all Senior Members, Melbourne and Sydney member representatives and the directors of the Legal Services and Country Advice and Information sections, the committee brought together a wide range of experience and sought to formulate the most relevant, interesting and accessible program for members.

In Melbourne and Sydney, local professional development committees identified the individual and collective development needs of members and drafted an ongoing program taking into account these needs and key strategic issues, for approval by the national committee. Two sessions were usually held per month and members were expected to attend as many as possible. The programs included training in legal issues, country information and forums for discussing current issues. Many sessions involved the provision of information by national and international experts. Highlights in 2010–11 included a national workshop on *Managing our Caseload into the Future* where tribunal members developed ideas for effective case management, joint seminars in conjunction with the Australian Government Solicitor on *Excellence in Decision Making* and presentations by Dr Anthony Grant of the University of Sydney on *Enhancing Professional Practice* through mentoring and structured self-appraisal. Member-led discussions on issues such as applying the procedural code, assessing credibility and corroborative documents have provided members with focussed and targeted professional development.

A National Members' Conference was held in March 2011. A number of



academics and subject experts spoke at the conference. The keynote speaker was the Chief Justice of the High Court, Robert French, who spoke on 'The Role of the Courts in Migration Law'. We were also fortunate to have the Secretary of the Department of Immigration and Citizenship, Mr Andrew Metcalfe, who addressed members on 'DIAC's current environment and pressures: Planning for 2011 and beyond'.

The tribunals continued to hold a program of 'background briefing' sessions during 2010-2011 to provide members with greater contextual insight into culture and location-specific issues. A number of topic experts were invited by the tribunals to speak to members on a range of relevant issues. In January 2011 Mr Faraz Sanei of Human Rights Watch spoke to members on political and human rights developments in Iran and Paul White, UNHCR Senior Protection Officer in Myanmar, spoke to members on the current situation in Burma.

## STAFF

Professional staff support to members is vital to efficient and lawful conduct of reviews. An important role of staff is the provision of member and client services. Registry staff are the point of contact when applicants or their representatives lodge review applications or communicate on issues concerning the conduct of reviews. Efficient and effective staff dealings with all stakeholders are essential for good tribunal performance and are important to our professional reputation. Important values are understanding and responding to client needs and seeking to improve services for individuals, families, businesses and the community.

Legal Services and Country Advice and Information Services staff provide high quality advice and information to members to support the conduct of reviews. Information Technology, Human Resources, Finance and Business Services, Caseload Strategy and Policy and Coordination staff provide a range of enabling services to support the operation of the tribunals and the delivery of high quality decisions.

Staff are employed under the Public Service Act and are appointed as tribunal officers under the Migration Act. As at 30 June 2011, the tribunals employed 284 APS employees, by headcount, comprising:

- 239 ongoing full-time employees;
- 31 ongoing part-time employees;
- 13 non-ongoing full-time employees; and
- 1 non-ongoing part time employee.

Table 4.3 sets out the number of staff employed as at 30 June 2011. Approximately 37% of employees are men and 63% are women.

Further staffing statistics are set out in Appendix 3.

TABLE 4.3 – STAFF AS AT 30 JUNE 2011

APS Level	NSW		Victoria		Total
	Women	Men	Women	Men	
APS 1	1	0	0	0	1
APS 2	3	4	3	2	12
APS 3	22	8	13	4	47
APS 4	33	17	10	5	65
APS 5	21	13	10	6	50
APS 6	19	14	8	7	48
Legal Officer	5	4	3	4	16
Executive Level 1	10	5	3	4	22
Senior Legal Officer	4	1	1	3	9
Executive Level 2	6	2	3	0	11
Principal Legal Officer	1	0	0	0	1
SES B1	0	1	0	0	1
SES B2	0	1	0	0	1
<b>Total</b>	<b>125</b>	<b>70</b>	<b>54</b>	<b>35</b>	<b>284</b>

### WORKFORCE PLANNING

The tribunals continue to review strategies to attract and retain quality staff. A wide range of skills and expertise are required, from general administrative staff to lawyers, accountants, and technology professionals. Staff are employed across 9 sections: Policy and Coordination, Caseload Strategy, Legal Services, Country Advice and Information Services, the NSW Registry, the Victorian Registry, Human Resources, Information Technology, and Finance and Business Services.

With changes in the availability of skills and changing expectations about the length of time a person may stay in one job, the tribunals are conscious of the need to be flexible in approach and expectations. The ways in which vacancies are advertised, the nature of the work, the workplace environment, training, personal development and advancement, and remuneration and flexibility of conditions are all factors which impact our capacity to attract and retain quality staff.

## LEARNING AND DEVELOPMENT

A changing work practice environment requires us to do our core business well, to define roles, standards and expectations clearly and to identify good performance. A major focus for the tribunals during the year was on training for all staff and members on fraud awareness, dealing with inappropriate behaviours in the workplace and upgrading to MS Office 2010. Consultative workshops were held to seek staff and member input into the tribunals' strategic plan. Other more targeted training included: a mental health awareness program to help improve client service delivery for registry staff, project management seminars and team leadership training.

Individual development and training needs are identified through the performance agreement system. The objectives of the performance agreement system are:

- providing a clear link between individual performance and organisational priorities and plans;
- improving communication between employees and supervisors;
- determining learning and development needs and appropriate activities; and
- defining supervisor and employee responsibilities and expectations.

Performance agreements and learning needs are tracked and monitored through an electronic reporting system.

The tribunals have a studies assistance scheme. A total of 29 staff undertook approved courses of study, taking a total of 130.5 days study leave and being reimbursed \$30,000 in course fees.

## EXECUTIVE REMUNERATION

The tribunals have two Senior Executive Service (SES) officers. Remuneration and conditions were determined through section 24 (1) determinations, taking into account current APS remuneration levels and the market demand for the skills of the officers. The section 24 (1) determinations made provision for performance pay at a level consistent with other similar officers in the APS. No performance linked bonuses were paid in 2010-11.

## CERTIFIED AGREEMENT

The current Certified Agreement covers all non-SES employees. The nominal expiry date is 29 November 2011.

The objectives set out in the Agreement are:

- to attract and retain quality people by having an affordable and attractive package of pay and conditions;
- to ensure our employment conditions continue to meet the needs of the tribunals and our employees;
- to contribute to the achievement of, and be consistent with, the tribunals' corporate objectives; and
- to improve productivity through greater efficiency and flexibility in the way that the tribunals implement government policy.

Table 4.4 sets out the salary ranges as at 30 June 2011. This reflects the most recent salary increase in the Certified Agreement, which was 4.3% from 11 November 2010.

**TABLE 4.4 – SALARY RANGE PAY POINTS AS AT 30 JUNE 2011**

Level	Lowest	Highest
APS 1	\$24,163	\$44,475
APS 2	\$45,535	\$50,461
APS 3	\$51,821	\$55,904
APS 4	\$57,717	\$62,641
APS 5	\$64,342	\$69,473
APS 6	\$71,202	\$79,806
Legal Officer	\$57,717	\$79,806
EL 1	\$88,975	\$98,361
Senior Legal Officer	\$88,975	\$110,830
EL 2	\$102,589	\$119,583
Principal Legal Officer	\$120,217	\$126,745

Salary advancement through pay points at each classification level occurs where an employee is assessed as satisfactory under the performance management system.

The Certified Agreement includes provision for:

- access to an employee assistance program
- study assistance
- a public transport loan scheme
- influenza vaccination and eyesight testing
- allowances for first aid officers, fire wardens, health and safety representatives and harassment contact officers
- balancing work and life
- one day's paid leave per year for volunteer work or emergency services training
- access to unpaid career interval leave after 5 years' service
- contributions towards promoting good health.

The Certified Agreement also includes a flexibility clause which provides for the supplementation of terms and conditions. As at 30 June 2011, supplementary agreements were in place with 14 non-SES employees in accordance with the flexibility clause with regards to salary supplementation, responsibility allowance, or part-time employment.

Seven Executive Level 2 officers received performance pay. An aggregate amount of \$37,418 was paid in performance-linked bonuses during 2010–11 in respect of performance in calendar year 2010. The average bonus payment was \$5,345 and payments ranged from \$2,706 - \$8,872.

## OCCUPATIONAL HEALTH AND SAFETY (OH&S)

As a result of amendments to the *Occupational Health and Safety Act 1991* (OH&S Act) that commenced on 15 March 2007, the tribunals established health and safety management arrangements (HSMAs) in 2008 in consultation with members and staff. The HSMAs were reviewed and updated in 2011.

The HSMAs commit the tribunals to ensuring the health and safety at work of members, staff, contractors and visitors through:

- providing and maintaining a healthy and safe work environment;
- providing financial and other resources to ensure that necessary OH&S programs and activities are established and maintained;
- providing a forum for consultation and cooperation on OH&S matters;
- complying with legislation as a minimum standard and implementing in full the requirements of the OH&S Act and the Occupational Health and Safety (Safety Arrangements) Regulations 1991 (the Regulations) in all aspects of the tribunals' business;
- making all levels of management within the tribunals accountable for OH&S; and
- ensuring that all members and staff of the tribunals are aware of their obligations under the OH&S Act.

The tribunals' Health and Safety Representatives (HSRs) are elected as required by the OH&S Act. All Health and Safety Representatives attend a five day training course that covers their responsibilities under the OH&S Act. OH&S Committees in Sydney and Melbourne meet quarterly. No investigations were conducted under the OH&S Act, nor were any directions or notices given.

A tribunals' focus is on reducing the social and financial cost of occupational injury and illness through timely intervention, promoting prevention activities and improving OH&S capability. OH&S and prevention activities undertaken in the tribunals during the year included:

- providing office and workstation assessments by professional occupational therapists and physiotherapists
- facilitating instruction and education by occupational therapists and physiotherapists of members and staff in correct ergonomic practices and injury prevention
- providing influenza vaccinations in the workplace
- improving awareness of health and safety issues of members and staff through training.

The 2011–12 Workers' Compensation premium for the tribunals, as advised by Comcare, has increased as a result of the overall premium rate for the Commonwealth sector increasing to 1.41% of payroll (from 1.20% for 2010–11) and the estimated lifetime cost of the tribunals' outstanding claims from 2007 to 2009.

## WORKPLACE DIVERSITY

The tribunals value a workplace free from discrimination and harassment, and seek to ensure that employment decisions are based on merit. Through the Certified Agreement, the tribunals emphasise flexibility and choice for employees to enable balance between work, family, community and lifestyle choices.

A revised Workplace Diversity Program was implemented in April 2011. The Program focuses on strategies to facilitate an understanding of workplace diversity principles and to ensure fairness and inclusiveness are applied in all business activities, and in human resource policies and practices.

The principles underlying the Workplace Diversity Program are:

- treating each other with respect and dignity
- making judgements based on equity and merit
- recognising people as individuals and valuing their diversity
- using the contributions that people can make to the tribunals
- taking appropriate action to identify and deal with discrimination and harassment
- providing a safe, secure and healthy working environment.

To heighten awareness of the benefits of diversity to the tribunals' workforce, the tribunals celebrated Harmony Day and International Women's Day.

In response to the Government's commitment to increase the representation of Indigenous employees in the APS to 2.7% by 2015, the tribunals increased efforts to recruit and retain

Indigenous employees. During the year, an indigenous cadet, recruited via the APSC Indigenous Pathways to Employment program, commenced a structured program of rotations through various sections of the tribunals.

The tribunals' Workplace Diversity Program through the Reconciliation Action Plan 2011 includes the celebration of the UN International Day of the World's Indigenous People. The tribunals' Reconciliation Action Plan 2011 was endorsed by Reconciliation Australia and published on their website. As part of the tribunals' ongoing commitment and support to Aboriginal and Torres Strait Islander culture and heritage, a program of events in the tribunals' Sydney and Melbourne offices included the celebration of NAIDOC Week, National Sorry Day and Reconciliation Week. The tribunals also supported Indigenous employees' attendance at the IAPSEN NSW Regional Forum and the APSC Third National Indigenous Australian Public Service Employees' Conference.

The tribunals are committed to providing a workplace that is safe and free from behaviour that may reasonably be perceived as harassing, intimidating, overbearing, bullying, or physically or emotionally threatening and ensuring that all employees are treated with respect and courtesy. To ensure the safety, rights and obligations of members and staff, complaints handling is based on confidentiality, impartiality, procedural fairness and protection from victimisation.

Information is provided to all staff and members in regard to workplace harassment prevention. Consistent with the Workplace Harassment Prevention Guideline, four new Workplace

Harassment Contact Officers were appointed and trained as required during 2010–11.

## DISABILITY STRATEGY

The tribunals' disability reporting was through the Australian Public Service Commission's annual *State of the Service Report*.

## CHANGES TO DISABILITY REPORTING IN ANNUAL REPORTS

Since 1994, Commonwealth departments and agencies have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007–08, reporting on the employer role was transferred to the Australian Public Service Commission's *State of the Service Report* and the *APS Statistical Bulletin*. These reports are available at [www.apsc.gov.au](http://www.apsc.gov.au). From 2010–11, departments and agencies are no longer required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by a new National Disability Strategy which sets out a ten year national policy framework for improving life for Australians with disability, their families and carers. A high level report to track progress for people with disability at a national level will be produced by the Standing Council on Community, Housing and Disability Services to the Council of Australian Governments and will be available at [www.fahcsia.gov.au](http://www.fahcsia.gov.au). The Social Inclusion Measurement and Reporting Strategy agreed by the Government in December 2009 will also include some reporting on disability matters in its regular *How Australia is Faring* report and, if appropriate, in strategic change indicators

in agency Annual Reports. More detail on social inclusion matters can be found at [www.socialinclusion.gov.au](http://www.socialinclusion.gov.au).

## ECOLOGICALLY SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL PERFORMANCE

The *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) sets out the principles of ecologically sustainable development.

Members and staff are encouraged to contribute to reducing our impact on the environment. The tribunals use 100% recycled A4 paper and have recently purchased lower energy computers, encourage the use of double-sided printing, promote awareness about the use of electricity and water, encourage composting food waste in the Melbourne office and are actively moving to the storage and use of electronic records and documents. Walk to Work and Ride to Work days are advertised internally and supported by management.

## GREEN COMMITTEE

The tribunals' Green Committee identifies opportunities and develops proposals for more environmentally sustainable practices, processes, purchasing and disposals, and promotes an environmentally sustainable culture within the tribunals consistent with the tribunals' environmental policy.

## PURCHASING

The tribunals' purchasing arrangements with suppliers include contracts and notified consultancies, interpreting services, communication services, rental of property and other goods and services. All purchases over \$10,000

are recorded on AusTender and the tribunals comply with the Senate Order on Departmental and Agency contracts by publishing on the tribunals' website details of contracts exceeding \$100,000 in value.

All purchasing is conducted in accordance with the Commonwealth Procurement Guidelines and Chief Executive Instructions. In line with these policies, the tribunals conduct procurement with value for money as the core principle. This is achieved through:

- encouraging competition
- the efficient, effective and ethical use of resources
- accountability and transparency in decision making.

The tribunals provided information and participated in activities related to scoping studies being conducted in relation to whole of government procurement during the course of the year.

Official air travel was arranged consistently with the government's lowest practical fare policy.

No contracts or offers were exempted from publication in AusTender on the basis that publication would disclose exempt matters under the *Freedom of Information Act 1982*. The tribunals use a standard contract proforma with provisions providing for access by the Auditor-General.

The tribunals have not let any Competitive Tendering and Contracting (CTC) contracts during 2010–11 for the provision of services previously performed in-house.

## ASSET MANAGEMENT

The tribunals manage over 1,000 assets with a combined value of \$4.5 million. The major asset categories include fit-out, office machines, furniture and fittings, IT equipment and intangible assets (software). Assets are depreciated at rates applicable for each asset class.

The Finance section prepares accrual-based monthly reports on the progress of purchases against capital plans and depreciation against the budget in order to achieve effective asset management.

Bi-annual stocktakes are performed to update and verify the accuracy of asset records.

During the year, the tribunals implemented new stocktake procedures.

## CONSULTANCY SERVICES

A range of services are provided to the tribunals under contract, including consultancy services. Consultants are distinguished from other contractors by the nature of the work they perform. A consultant is an individual, a partnership or a corporation engaged to provide professional, independent and expert advice or services that will assist with agency decision-making.

The tribunals engage the services of consultants when:

- there is a need for specialist knowledge or skills
- an independent assessment or opinion is desirable
- the proposed consultancy meets corporate objectives or will bring about productivity savings
- alternatives to the use of a consultant have been considered.



In determining whether contracts are for consultancy or non-consultancy services, the tribunals have regard to guidelines published by the Department of Finance and Deregulation – Guidance on Procurement Publishing Obligations.

During 2010–11, 7 new consultancy contracts were entered into involving

total actual expenditure of \$77,113. Three exceeded \$10,000. No ongoing consultancy contracts were active during the 2010–11 year.

Information on expenditure on contracts and consultancies is also available on the AusTender website [www.tenders.gov.au](http://www.tenders.gov.au).

**TABLE 4.5 – ANNUAL EXPENDITURE ON CONSULTANCY CONTRACTS**

Consultant Name	Description	Contract Price	Selection Process	Justification
HBA Consultancy	Review of Members Remuneration arrangements	\$28,084	Direct Quote	Need for independent research or assessment

## PURCHASER/PROVIDER ARRANGEMENTS

All agencies are required to report on purchaser/provider arrangements. Purchaser/provider arrangements relate to arrangements where the outputs of one agency are purchased by another agency to contribute to outcomes. Purchaser/provider arrangements can occur between Commonwealth agencies or between Commonwealth agencies and State/Territory government or private sector bodies. The tribunals have no purchaser/provider arrangements.

The MRT-RRT have a service delivery agreement (SDA) with the Administrative Appeals Tribunal (the AAT) for the AAT to provide accommodation, registry and support services in Adelaide and Perth and registry and support services in Brisbane. The tribunals have members

based in each of those locations. The SDA was under review at the end of the reporting period.

## DISCRETIONARY GRANTS

All agencies are required to report on discretionary grants. Discretionary grants are payments where discretion is used to determine whether or not a particular body receives a grant. The tribunals did not provide or receive any discretionary grants during 2010–11.

## ADVERTISING AND MARKET RESEARCH

All agencies are required to report on advertising and market research. During 2010–11, the tribunals spent \$62,646 (inclusive of GST) on advertising services as set out in Table 4.6. The tribunals did not engage any market research services.

**TABLE 4.6 – ADVERTISING SERVICES**

Vendor	Amount	Description
Adcorp Australia Ltd	\$62,646	Employment advertising
Total	\$62,646	

# FINANCIAL INFORMATION

TO PROVIDE VISA APPLICANTS AND SPONSORS WITH INDEPENDENT, FAIR, JUST,  
ECONOMICAL, INFORMAL AND QUICK REVIEWS OF MIGRATION AND REFUGEE DECISIONS

# PART 05

The MRT and the RRT are prescribed as a single agency, the 'Migration Review Tribunal and Refugee Review Tribunal' (the MRT-RRT) for the purposes of the *Financial Management and Accountability Act 1997*.

The operations of the tribunals are funded through Appropriation Acts.

The following two tables are provided consistent with guidelines set out in Requirements for Annual Reports for Departments, Executive Agencies and FMA Act bodies, issued by the Department of the Prime Minister and Cabinet in July 2011. The tables do not form part of the audited financial statements, which are set out from page 90.

#### AGENCY RESOURCE STATEMENT 2010-11

	Actual Available appropriation	Payments made	Balance remaining
	for 2010-11 \$'000	2010-11 \$'000	2010-11 \$'000
	(a)	(b)	(a) - (b)
<b>Ordinary annual services<sup>1</sup></b>			
Departmental appropriation <sup>2</sup>	55,937	45,524	10,413
<b>Total</b>	<b>55,937</b>	<b>45,524</b>	<b>10,413</b>
<b>Administered expenses</b>			
Outcome 1	4,234	4,234	-
<b>Total</b>	<b>4,234</b>	<b>4,234</b>	<b>-</b>
<b>Total ordinary annual services</b>	<b>A</b>	<b>60,171</b>	<b>49,758</b>
<b>Departmental non-operating</b>			
Equity injections Previous years' outputs	80	80	-
<b>Total</b>	<b>80</b>	<b>80</b>	<b>-</b>
<b>Total other services</b>	<b>B</b>	<b>80</b>	<b>80</b>
<b>Total available annual appropriations and payments</b>	<b>60,251</b>	<b>49,838</b>	<b>10,413</b>
<b>Total resourcing</b> A+B	<b>60,251</b>	<b>49,838</b>	<b>10,413</b>

1. Appropriation Bill (No.1) 2010-11, prior years' unspent departmental appropriations and section 31 FMA Act relevant agency receipts. \$5.616m of prior years' appropriations meet criteria for a formal reduction in appropriations but at law this had not occurred before the end of the reporting period.

2. Includes an amount of \$1.904m in 2010-11 for the Departmental Capital Budget. For accounting purposes this amount has been designated as 'contributions by owners'.

## EXPENSES AND RESOURCES FOR OUTCOME 1

Outcome 1: To provide correct and preferable decisions for visa applicants and sponsors through independent, fair, just, economical, informal and quick merits reviews of migration and refugee decisions.	Budget*	Actual expenses	Variation
	2010-11 \$'000	2010-11 \$'000	2010-11 \$'000
	<b>(a)</b>	<b>(b)</b>	<b>(a) - (b)</b>
<b>Program 1.1: Final independent merits review of decisions concerning refugee status and the refusal or cancellation of migration and refugee visas.</b>			
Administered expenses			
Special Appropriations	8,300	5,808	2,492
Departmental expenses			
Ordinary annual services (Appropriation Bill No. 1)	43,218	45,835	(2,617)
Revenues from independent sources (Section 31)	-	130	(130)
<b>Total for Program 1.1</b>	<b>51,518</b>	<b>51,773</b>	<b>(255)</b>
<b>Total expenses for Outcome 1</b>	<b>51,518</b>	<b>51,773</b>	<b>(255)</b>
	2009-10	2010-11	
<b>Average Staffing Level (number)</b>	<b>316</b>	<b>319</b>	<b>(3)</b>

\* Full year budget, including any subsequent adjustment made to the 2010-11 Budget

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## INDEPENDENT AUDITOR'S REPORT

To the Minister for Immigration and Citizenship

### Report on the Financial Statements

I have audited the accompanying financial statements of the Migration Review Tribunal and Refugee Review Tribunal for the year ended 30 June 2011, which comprise: a Statement by the Chief Executive and Chief Financial Officer; Statement of Comprehensive Income; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Contingencies; Schedule of Asset Additions; Schedule of Administered Items; and Notes comprising a Summary of Significant Accounting Policies and other explanatory information.

#### *Chief Executive's Responsibility for the Financial Statements*

The Chief Executive of the Migration Review Tribunal and Refugee Review Tribunal is responsible for the preparation of financial statements that give a true and fair view in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards, and for such internal control as the Chief Executive determines is necessary to enable the preparation of the financial statements that are free from material misstatement, whether due to fraud or error.

#### *Auditor's Responsibility*

My responsibility is to express an opinion on the financial statements based on my audit. I have conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These auditing standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the agency's preparation of the financial statements that give a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the agency's internal control. An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of accounting estimates made by the Chief

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Executive of the agency, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

***Independence***

In conducting my audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

***Opinion***

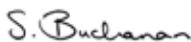
In my opinion, the financial statements of the Migration Review Tribunal and Refugee Review Tribunal:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards; and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Migration Review Tribunal's and Refugee Review Tribunal's financial position as at 30 June 2011 and of its financial performance and cash flows for the year then ended.

**Report on Other Legal and Regulatory Requirements**

As described in note 22 to the financial statements, the Migration Review Tribunal and Refugee Review Tribunal has recently become aware there is an increased risk of a breach of section 83 of the Constitution where payments are made from special appropriations and special accounts in circumstances where the payments do not accord with conditions included in the relevant legislation, and has advised that these circumstances will be investigated.

Australian National Audit Office



Serena Buchanan  
Audit Principal

Delegate of the Auditor-General

Canberra

13 September 2011



**Migration Review Tribunal and Refugee Review Tribunal**

**STATEMENT BY THE CHIEF EXECUTIVE AND CHIEF FINANCIAL OFFICER**

In our opinion, the attached financial statements for the year ended 30 June 2011 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.



Signed.....

Giles Short  
Acting Chief Executive

13 September 2011



Signed.....

Colin Plowman  
Chief Financial Officer

13 September 2011

## STATEMENT OF COMPREHENSIVE INCOME

for the period ended 30 June 2011

	Notes	2011 \$'000	2010 \$'000
<b>EXPENSES</b>			
Employee benefits	<u>3A</u>	<b>35,201</b>	33,981
Supplier	<u>3B</u>	<b>9,507</b>	9,298
Depreciation and amortisation	<u>3C</u>	<b>1,155</b>	1,334
Finance costs	<u>3D</u>	<b>101</b>	133
Write-down and impairment of assets	<u>3E</u>	-	29
Losses from asset sales	<u>3F</u>	<b>1</b>	2
<b>Total expenses</b>		<b><u>45,965</u></b>	<b><u>44,777</u></b>
<b>LESS:</b>			
<b>OWN-SOURCE INCOME</b>			
<b>Own-source revenue</b>			
Sale of goods and rendering of services	<u>4A</u>	<b>350</b>	54
<b>Total own-source revenue</b>		<b><u>350</u></b>	<b><u>54</u></b>
<b>Gains</b>			
Other	<u>4B</u>	<b>38</b>	56
<b>Total gains</b>		<b><u>38</u></b>	<b><u>56</u></b>
<b>Total own-source income</b>		<b><u>388</u></b>	<b><u>110</u></b>
<b>Net cost of services</b>		<b><u>45,577</u></b>	<b><u>44,667</u></b>
Revenue from Government	<u>4C</u>	<b>42,932</b>	40,062
<b>Total comprehensive (loss) attributable to the Australian Government</b>		<b><u>(2,645)</u></b>	<b><u>(4,605)</u></b>

The above statement should be read in conjunction with the accompanying notes.

## BALANCE SHEET

as at 30 June 2011

	Notes	2011 \$'000	2010 \$'000
<b>ASSETS</b>			
<b>Financial Assets</b>			
Cash and cash equivalents	<u>5A</u>	125	49
Trade and other receivables	<u>5B</u>	6,765	7,158
<b>Total financial assets</b>		<u>6,890</u>	<u>7,207</u>
<b>Non-Financial Assets</b>			
Land and buildings	<u>6A</u>	1,254	1,509
Property, plant and equipment	<u>6B,C</u>	878	572
Intangibles	<u>6D,E</u>	2,416	2,422
Other	<u>6F</u>	199	203
<b>Total non-financial assets</b>		<u>4,747</u>	<u>4,706</u>
<b>Total assets</b>		<u>11,637</u>	<u>11,913</u>
<b>LIABILITIES</b>			
<b>Payables</b>			
Suppliers	<u>7</u>	1,090	648
<b>Total payables</b>		<u>1,090</u>	<u>648</u>
<b>Interest Bearing Liabilities</b>			
Leases	<u>8</u>	1,394	1,904
<b>Total interest bearing liabilities</b>		<u>1,394</u>	<u>1,904</u>
<b>Provisions</b>			
Employee provisions	<u>9</u>	7,160	6,707
<b>Total provisions</b>		<u>7,160</u>	<u>6,707</u>
<b>Total liabilities</b>		<u>9,644</u>	<u>9,259</u>
<b>Net assets</b>		<u>1,993</u>	<u>2,654</u>
<b>EQUITY</b>			
<b>Parent Entity Interest</b>			
Contributed equity		12,860	10,876
Reserves		384	384
Retained surplus (accumulated deficit)		(11,251)	(8,606)
<b>Total parent entity interest</b>		<u>1,993</u>	<u>2,654</u>

The above statement should be read in conjunction with the accompanying notes.

## STATEMENT OF CHANGES IN EQUITY

for the period ended 30 June 2011

	Retained earnings		Asset revaluation reserve		Contributed equity/capital		Total equity	
	2011	2010	2011	2010	2011	2010	2011	2010
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Opening balance</b>	(8,606)	(4,001)	384	384	10,876	10,876	2,654	7,259
<b>Comprehensive income</b>								
Surplus (Deficit) for the period	(2,645)	(4,605)					(2,645)	(4,605)
<b>Total comprehensive income</b>	<b>(2,645)</b>	<b>(4,605)</b>					<b>(2,645)</b>	<b>(4,605)</b>
<b>Transactions with owners</b>								
<b>Contributions by owners</b>								
Equity injection - Appropriations					80	-	80	-
Departmental capital budget					1,904	-	1,904	-
<b>Sub-total transactions with owners</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1,984</b>	<b>-</b>	<b>1,984</b>	<b>-</b>
<b>Closing balance attributable to the Australian Government as at 30 June</b>	<b>(11,251)</b>	<b>(8,606)</b>	<b>384</b>	<b>384</b>	<b>12,860</b>	<b>10,876</b>	<b>1,993</b>	<b>2,654</b>

The above statement should be read in conjunction with the accompanying notes.

## CASH FLOW STATEMENT

for the period ended 30 June 2011

	2011	2010
Notes	\$'000	\$'000
<b>OPERATING ACTIVITIES</b>		
<b>Cash received</b>		
Appropriations	44,592	43,350
Sales of goods and rendering of services	130	49
Net GST received	1,071	1,030
Other	-	1
<b>Total cash received</b>	<b>45,793</b>	<b>44,430</b>
<b>Cash used</b>		
Employees	34,803	33,073
Suppliers	10,303	10,363
Borrowing costs	101	133
<b>Total cash used</b>	<b>45,207</b>	<b>43,569</b>
<b>Net cash from (used by) operating activities</b>	<b>10</b>	<b>861</b>
<b>INVESTING ACTIVITIES</b>		
<b>Cash used</b>		
Purchase of property, plant and equipment	958	439
<b>Total cash used</b>	<b>958</b>	<b>439</b>
<b>Net cash from (used by) investing activities</b>	<b>(958)</b>	<b>(439)</b>
<b>FINANCING ACTIVITIES</b>		
<b>Cash received</b>		
Contributed equity	958	-
<b>Total cash received</b>	<b>958</b>	<b>-</b>
<b>Cash used</b>		
Repayment of borrowings	510	476
<b>Total cash used</b>	<b>510</b>	<b>476</b>
<b>Net cash from (used by) financing activities</b>	<b>448</b>	<b>(476)</b>
<b>Net increase (decrease) in cash held</b>	<b>76</b>	<b>(54)</b>
Cash and cash equivalents at the beginning of the reporting period	49	103
<b>Cash and cash equivalents at the end of the reporting period</b>	<b>5A</b>	<b>49</b>

Note the 2010 *Operating Activities* has been adjusted for GST and appropriations.

The above statement should be read in conjunction with the accompanying notes.

## SCHEDULE OF COMMITMENTS

as at 30 June 2011

	2011	2010
BY TYPE	\$'000	\$'000
<b>Commitments receivable</b>		
Net GST recoverable on commitments	<u>(1,454)</u>	<u>(1,946)</u>
<b>Total commitments receivable</b>	<u>(1,454)</u>	<u>(1,946)</u>
<b>Commitments payable</b>		
<b>Other commitments</b>		
Operating leases	<u>15,992</u>	<u>21,405</u>
<b>Total other commitments</b>	<u>15,992</u>	<u>21,405</u>
<b>Net commitments by type</b>	<u>14,538</u>	<u>19,459</u>
<b>BY MATURITY</b>		
<b>Commitments receivable</b>		
<b>Other commitments receivable</b>		
Net GST recoverable on commitments	<u>(1,454)</u>	<u>(1,946)</u>
<b>Total other commitments receivable</b>	<u>(1,454)</u>	<u>(1,946)</u>
<b>Commitments payable</b>		
<b>Operating lease commitments</b>		
One year or less	<u>4,934</u>	<u>4,701</u>
From one to five years	<u>11,058</u>	<u>16,704</u>
<b>Total operating lease commitments</b>	<u>15,992</u>	<u>21,405</u>
<b>Net commitments by maturity</b>	<u>14,538</u>	<u>19,459</u>

NB: Commitments are GST inclusive where relevant.

On 1 September 2003, the two tribunals re-located in new premises in Melbourne with a lease for a period of 10 years. The commitment at 30 June 2011 is \$4.1m.

On 1 May 2005, the two tribunals re-located in new premises in Sydney with a lease for a period of 10 years. The commitment at 30 June 2011 is \$11.9m.

Operating leases included are effectively non-cancellable and comprise:

<i>Nature of lease</i>	<i>General description of leasing</i>
Leases for office accommodation	Lease payments are subject to annual increase in accordance with the terms of the lease agreements.
Agreements for the provision of motor vehicles to senior executive officers	No contingent rentals exist. There are no renewal or purchase options available to the Tribunal.

The above statement should be read in conjunction with the accompanying notes.

## **SCHEDULE OF CONTINGENCIES**

*as at 30 June 2011*

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The MRT-RRT has no contingent assets or liabilities

This schedule should be read in conjunction with the accompanying notes.

## SCHEDULE OF ASSET ADDITIONS

for the period ended 30 June 2011

The following non-financial non-current assets were added in 2010-11:

	Buildings \$'000	Other property, plant & equipment \$'000	Intangibles \$'000	Total \$'000
<b>Additions funded in the current year</b>				
By purchase - appropriation ordinary annual services				
Departmental capital budget	211	529	460	1,200
By purchase - appropriation other services				
Equity injections	-	-	-	-
<b>Total funded additions funded in the current year</b>	<b>211</b>	<b>529</b>	<b>460</b>	<b>1,200</b>
<b>Total additions</b>	<b>211</b>	<b>529</b>	<b>460</b>	<b>1,200</b>

The following non-financial non-current assets were added in 2009-10:

	Buildings \$'000	Other property, plant & equipment \$'000	Intangibles \$'000	Total \$'000
<b>Additions funded in the current year</b>				
By purchase - appropriation ordinary annual services				
Ordinary operating costs	39	243	157	439
<b>Total funded additions funded in the current year</b>	<b>39</b>	<b>243</b>	<b>157</b>	<b>439</b>



**SCHEDULE OF ADMINISTERED ITEMS**

	Notes	2011 \$'000	2010 \$'000
<b>Income administered on behalf of Government</b>			
<i>for the period ended 30 June 2011</i>			
<b>Revenue</b>			
<b>Non-taxation revenue</b>			
Other - MRT application fees	15	12,815	10,291
Other - RRT post decision fees	15	2,857	2,352
<b>Total non-taxation revenue</b>		<b>15,672</b>	<b>12,643</b>
<b>Total revenues administered on behalf of Government</b>		<b>15,672</b>	<b>12,643</b>
<b>Expenses administered on behalf of Government</b>			
<i>for the period ended 30 June 2011</i>			
Write-down and impairment of assets	16A	1,574	1,546
Other - refunds	16B	4,234	5,291
<b>Total expenses administered on behalf of Government</b>		<b>5,808</b>	<b>6,837</b>

This schedule should be read in conjunction with the accompanying notes.

**SCHEDULE OF ADMINISTERED ITEMS**

	Notes	2011 \$'000	2010 \$'000
<b>Assets administered on behalf of Government</b>			
<i>as at 30 June 2011</i>			
<b>Financial assets</b>			
Cash and cash equivalents	17A	86	59
Trade and other receivables	17B	1,305	749
<b>Total financial assets</b>		<b>1,391</b>	<b>808</b>
<b>Liabilities administered on behalf of Government</b>			
<i>as at 30 June 2011</i>			
<b>Financial liabilities</b>			
Other	18	-	-
<b>Total financial liabilities</b>		<b>-</b>	<b>-</b>

This schedule should be read in conjunction with the accompanying notes.

**SCHEDULE OF ADMINISTERED ITEMS**

	Notes	2011 \$'000	2010 \$'000
<b>Administered Cash Flows</b>			
<i>for the period ended 30 June 2011</i>			
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Fees		13,540	10,811
<b>Total cash received</b>		<b>13,540</b>	<b>10,811</b>
<b>Cash used</b>			
Other - refunds		4,234	5,291
<b>Total cash used</b>		<b>4,234</b>	<b>5,291</b>
<b>Net cash flows from (used by) operating activities</b>		<b>9,306</b>	<b>5,520</b>
Cash and cash equivalents at the beginning of the reporting period		59	54
Cash from Official Public Account for:			
- Transfer from other entities (Finance - Whole of Government)		4,234	5,340
		<b>4,293</b>	<b>5,394</b>
Cash to Official Public Account for:			
- Appropriations		13,513	10,855
		<b>13,513</b>	<b>10,855</b>
<b>Cash and cash equivalents at the end of the reporting period</b>	17A	<b>86</b>	<b>59</b>

This schedule should be read in conjunction with the accompanying notes.

**SCHEDULE OF ADMINISTERED ITEMS**

<b>Administered Commitments</b>			
<i>as at 30 June 2011</i>			
There are no administered commitments at 30 June 2011 (2010: Nil)			

**SCHEDULE OF ADMINISTERED ITEMS (FMA Act only)**

<b>Administered Contingencies</b>			
<i>as at 30 June 2011</i>			
There are no administered contingencies at 30 June 2011 (2010: Nil)			

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

## Note 1: Summary of Significant Accounting Policies

### 1.1 Objectives of the Migration Review Tribunal and Refugee Review Tribunal

The Migration Review Tribunal (the MRT) and the Refugee Review Tribunal (the RRT) are statutory bodies established under the *Migration Act 1958*.

The Financial Management and Accountability Regulations were amended with effect from 1 July 2006 to establish a single prescribed agency, the 'Migration Review Tribunal and Refugee Review Tribunal' (MRT-RRT) for the purposes of the *Financial Management and Accountability Act 1997* (the FMA Act).

The MRT-RRT has one outcome:

Outcome 1: To provide correct and preferable decisions for visa applicants and sponsors through independent, fair, just, economical, informal and quick merits reviews of migration and refugee decisions.

The continued existence of the MRT-RRT in its present form and with its present programs is dependent on Government policy and on continuing appropriations by Parliament for the MRT-RRT's administration and programs.

The MRT-RRT activities contributing toward this outcome are classified as either departmental or administered. Departmental activities involve the use of assets, liabilities, revenues and expenses controlled or incurred by the MRT-RRT in its own right. Administered activities involve the management or oversight by the MRT-RRT, on behalf of the Government, of items controlled or incurred by the Government.

The MRT-RRT conducts the following administered activities: 1. the collection of MRT application fees and RRT post decision fees. 2. The repayment of fees to successful applicants.

### 1.2 Basis of Preparation of the Financial Statements

The financial statements are required by section 49 of the *Financial Management and Accountability Act 1997* and are general purpose financial statements.

The Financial Statements have been prepared in accordance with:

- Finance Minister's Orders (or FMO) for reporting periods ending on or after 1 July 2009; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The financial statements are presented in Australian dollars and values are rounded to the nearest thousand dollars unless otherwise specified.

Unless an alternative treatment is specifically required by an accounting standard or the FMO, assets and liabilities are recognised in the balance sheet when and only when it is probable that future economic benefits will flow to the entity or a future sacrifice of economic benefits will be required and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under Agreements Equally Proportionately Unperformed are not recognised unless required by an accounting standard. Liabilities and assets that are unrecognised are reported in the schedule of commitments or the schedule of contingencies.

Unless alternative treatment is specifically required by an accounting standard, income and expenses are recognised in the statement of comprehensive income when and only when the flow, consumption or loss of economic benefits has occurred and can be reliably measured.

Administered revenues, expenses, assets and liabilities and cash flows reported in the Schedule of Administered Items and related notes are accounted for on the same basis and using the same policies as for departmental items, except where otherwise stated at Note 1.19.

### 1.3 Significant Accounting Judgements and Estimates

In the process of applying the accounting policies listed in this note, MRT-RRT has made the following judgements that have the most significant impact on the amounts recorded in the financial statements:

- The fair value of land and buildings was revalued at the 30 June 2010 by an independent valuer.

### 1.4 New Australian Accounting Standards

#### Adoption of New Australian Accounting Standard Requirements

No accounting standard has been adopted earlier than the application date as stated in the standard. There are no new accounting standards, amendments to standards and interpretations issued by the Australian Accounting Standards Board that are applicable to the current period, which have had a material financial impact on the MRT-RRT.

**Future Australian Accounting Standard Requirements**

No new standards, amendments to standards and interpretations that have been issued by the Australian Accounting Standards Board that are applicable to future periods, are expected to have a material financial impact on the MRT-RRT.

**1.5 Revenue**

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- a) the amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- b) the probable economic benefits associated with the transaction will flow to the MRT-RRT.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at end of the reporting period. Allowances are made when collectability of the debt is no longer probable.

Appropriations receivable are recognised at their nominal amounts.

**Resources Received Free of Charge**

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense. Resources received free of charge are recorded as either revenue or gains depending on their nature.

**Revenue from Government**

Amounts appropriated for departmental appropriations for the year (adjusted for any formal additions and reductions) are recognised as Revenue from Government when the MRT-RRT gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned. Appropriations receivable are recognised at their nominal amounts.

**Parental Leave Payments Scheme**

Amounts received under the Parental Leave Payments Scheme by the MRT-RRT not yet paid to employees were presented gross as cash and a liability (payable). The total amount received under this scheme is disclosed as a footnote to the Note 4C: Revenue from Government.

**1.6 Gains****Resources Received Free of Charge**

Resources received free of charge are recognised as gains when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Resources received free of charge are recorded as either revenue or gains depending on their nature.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government agency or authority as a consequence of a restructuring of administrative arrangements (Refer to Note 1.7).

**Sale of Assets**

Gains from disposal of assets are recognised when control of the asset has passed to the buyer.

**1.7 Transactions with the Government as Owner****Equity Injections**

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity.

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

## 1.8 Employee Benefits

Liabilities for 'short-term employee benefits' (as defined in AASB 119 *Employee Benefits*) and termination benefits due within twelve months of end of reporting period are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

Other long-term employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the reporting period minus the fair value at the end of the reporting period of plan assets (if any) out of which the obligations are to be settled directly.

### Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the MRT-RRT is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will apply at the time the leave is taken, including the MRT-RRT's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined by reference to the work of an actuary as at 30 June 2011. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

### Superannuation

Most staff and members of the MRT-RRT are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), Australian Government Employees Superannuation Trust (AGEST) or the PSS accumulation plan (PSSap).

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported by the Department of Finance and Deregulation as an administered item.

The MRT-RRT makes employer contributions to the employees' superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government. The MRT-RRT accounts for the contributions as if they were contributions to defined contribution plans.

The liability for superannuation recognised as at 30 June represents outstanding contributions for the final fortnight of the year.

## 1.9 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and rewards incidental to ownership of leased assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where an asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability is recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight-line basis which is representative of the pattern of benefits derived from the leased assets.

## 1.10 Borrowing Costs

All borrowing costs are expensed as incurred.

### 1.11 Cash

Cash and cash equivalents includes cash on hand, cash held with outsiders, demand deposits in bank accounts with an original maturity of 3 months or less that are readily convertible to known amounts of cash and subject to insignificant risk of changes in value. Cash is recognised at its nominal amount.

### 1.12 Financial Assets

The MRT-RRT classifies its financial assets in the *loans and receivables* category.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition.

#### Loans and Receivables

Trade receivables, loans and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'loans and receivables'. Loans and receivables are measured at amortised cost using the effective interest method less impairment. Interest is recognised by applying the effective interest rate.

#### Impairment of Financial Assets

Financial assets are assessed for impairment at the end of each reporting period.

### 1.13 Financial Liabilities

Financial liabilities are classified as other financial liabilities and are recognised and derecognised upon 'trade date'.

#### Other Financial Liabilities

Other financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs.

Other financial liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective yield basis.

The effective interest method is a method of calculating the amortised cost of a financial liability and of allocating interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments through the expected life of the financial liability, or, where appropriate, a shorter period.

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

### 1.14 Contingent Liabilities and Contingent Assets

Contingent liabilities and contingent assets are not recognised in the balance sheet but are reported in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

### 1.15 Acquisition of Assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and income at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor agency's accounts immediately prior to the restructuring.

### 1.16 Property, Plant and Equipment

#### Asset Recognition Threshold

Purchases of property, plant and equipment are recognised initially at cost in the balance sheet, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

## Revaluations

Fair values for each class of asset are determined as: Leasehold Improvements at '*Depreciated Replacement Cost*', and Plant and Equipment at '*Market Value*'.

Following initial recognition at cost, property plant and equipment are carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment has been credited to equity under the heading of asset revaluation reserve except to the extent that it reversed a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit. Revaluation decrements for a class of assets were recognised directly in the surplus/deficit except to the extent that they reversed a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

## Depreciation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to MRT-RRT using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

	2011	2010
Leasehold improvements	<b>Lease term</b>	Lease term
Plant and Equipment	<b>3 to 10 years</b>	3 to 10 years

## Impairment

All assets were assessed for impairment at 30 June 2011. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the MRT-RRT were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

### **1.17 Intangibles**

MRT-RRT's intangibles are comprised of internally developed software and purchased software for internal use. These assets are carried at cost less accumulated amortisation.

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of MRT-RRT's software are 3 to 10 years (2010: 3 to 8 years).

All software assets were assessed for indications of impairment as at 30 June 2011.

### **1.18 Taxation / Competitive Neutrality**

The MRT-RRT is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

Revenues, expenses and assets are recognised net of GST except:

- where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- for receivables and payables.

### **1.19 Reporting of Administered Activities**

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the schedule of administered items and related notes.

Except where otherwise stated below, administered items are accounted for on the same basis and using the same policies as for departmental items, including the application of Australian Accounting Standards.

#### **Administered Cash Transfers to and from the Official Public Account**

Revenue collected by MRT-RRT for use by the Government rather than the agency is administered revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance and Deregulation. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the agency on behalf of the Government and reported as such in the statement of cash flows in the schedule of administered items and in the administered reconciliation table in Note 19.

#### **Revenue**

All administered revenues are revenues relating to the course of ordinary activities performed by the MRT-RRT on behalf of the Australian Government.

Revenue is generated from fees charged for MRT applications when lodged and RRT applications once the decision has been made (post-decision fee). Administered fee revenue is recognised when invoiced (RRT fees) or received (MRT fees).

#### **Loans and Receivables**

Where loans and receivables are not subject to concessional treatment, they are carried at amortised cost using the effective interest method. Gains and losses due to impairment, derecognition and amortisation are recognised through profit or loss.

### **Note 2: Events After the Reporting Period**

There has not been any event occurring after balance date that has not been brought to account in the 2010-11 financial report.

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

## Note 3: Expenses

	2011	2010
	\$'000	\$'000

### Note 3A: Employee Benefits

Wages and salaries	26,296	25,683
Superannuation:		
Defined contribution plans	1,724	945
Defined benefit plans	2,455	2,995
Leave and other entitlements	4,726	4,346
Separation and redundancies	-	12
<b>Total employee benefits</b>	<b>35,201</b>	<b>33,981</b>

### Note 3B: Suppliers

#### Goods and services

Property operating expenses (excluding lease payments)	1,291	1,291
Interpreting	1,057	1,053
Communications	935	1,136
Interstate facilities	646	701
Printing and Stationery	410	371
Other	2,217	1,895
<b>Total goods and services</b>	<b>6,556</b>	<b>6,447</b>

#### Goods and services are made up of:

Provision of goods – external parties	620	552
Rendering of services – related entities	1,308	1,317
Rendering of services – external parties	4,628	4,578
<b>Total goods and services</b>	<b>6,556</b>	<b>6,447</b>

#### Other supplier expenses

##### Operating lease rentals – external parties:

Minimum lease payments	2,791	2,672
Workers compensation expenses	160	179
<b>Total other supplier expenses</b>	<b>2,951</b>	<b>2,851</b>
<b>Total supplier expenses</b>	<b>9,507</b>	<b>9,298</b>

### Note 3C: Depreciation and Amortisation

#### Depreciation:

Property, plant and equipment	223	212
Buildings	466	466
<b>Total depreciation</b>	<b>689</b>	<b>678</b>

#### Amortisation:

Intangibles	466	656
<b>Total amortisation</b>	<b>466</b>	<b>656</b>
<b>Total depreciation and amortisation</b>	<b>1,155</b>	<b>1,334</b>

### Note 3D: Finance Costs

Finance leases	101	133
<b>Total finance costs</b>	<b>101</b>	<b>133</b>

### Note 3E: Write-Down and Impairment of Assets

#### Asset write-downs and impairments from:

Revaluation decrement - Leasehold improvements	-	29
<b>Total write-down and impairment of assets</b>	<b>-</b>	<b>29</b>



**Note 3F: Losses from Asset Sales**

**Property, plant and equipment:**

Carrying value of assets sold	<u>1</u>	<u>2</u>
<b>Total losses from asset sales</b>	<b><u>1</u></b>	<b><u>2</u></b>

**Note 4: Income**

	<b>2011</b>	2010
<b>OWN-SOURCE REVENUE</b>	<b>\$'000</b>	\$'000

**Note 4A: Sale of Goods and Rendering of Services**

Rendering of services - related entities	<u>350</u>	<u>54</u>
<b>Total sale of goods and rendering of services</b>	<b><u>350</u></b>	<b><u>54</u></b>

**GAINS**

**Note 4B: Other Gains**

Resources received free of charge	38	55
Other	<u>-</u>	<u>1</u>
<b>Total other gains</b>	<b><u>38</u></b>	<b><u>56</u></b>

**REVENUE FROM GOVERNMENT**

**Note 4C: Revenue from Government\***

**Appropriations:**

Departmental appropriation	<u>42,932</u>	<u>40,062</u>
<b>Total revenue from Government</b>	<b><u>42,932</u></b>	<b><u>40,062</u></b>

\* The entity received \$9k (2010: \$Nil) under the Paid Parental Leave Scheme.

## NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

### Note 5: Financial Assets

	2011 \$'000	2010 \$'000
<b>Note 5A: Cash and Cash Equivalents</b>		
Cash on hand or on deposit	125	49
<b>Total cash and cash equivalents</b>	<b>125</b>	<b>49</b>
<b>Note 5B: Trade and Other Receivables</b>		
<b>Good and Services:</b>		
Goods and services - related entities	242	57
<b>Total receivables for goods and services</b>	<b>242</b>	<b>57</b>
<b>Appropriations receivable :</b>		
For existing programs	6,321	6,955
<b>Total appropriations receivable</b>	<b>6,321</b>	<b>6,955</b>
<b>Other receivables:</b>		
GST receivable from the Australian Taxation Office	188	131
Other	14	15
<b>Total other receivables</b>	<b>202</b>	<b>146</b>
<b>Total trade and other receivables (gross)</b>	<b>6,765</b>	<b>7,158</b>
<b>Receivables are expected to be recovered in:</b>		
No more than 12 months	6,765	7,158
More than 12 months	-	-
<b>Total trade and other receivables (net)</b>	<b>6,765</b>	<b>7,158</b>
<b>Receivables are aged as follows:</b>		
Not overdue	6,765	7,158
<b>Total receivables (gross)</b>	<b>6,765</b>	<b>7,158</b>

Note the 2010 figure for Receivables includes an offset of \$4.801m against appropriation receivable previously included in 'Other payables'.

**Note 6: Non-Financial Assets**

	2011	2010
	\$'000	\$'000

**Note 6A: Land and Buildings****Leasehold improvements:**

Fair value	1,807	1,595
Accumulated depreciation	(553)	(86)
<b>Total leasehold improvements</b>	<b>1,254</b>	<b>1,509</b>
<b>Total land and buildings</b>	<b>1,254</b>	<b>1,509</b>

\$1,254k (2010: \$1,509k) of total leasehold improvements may not be disposed of without prior ministerial approval.

No indicators of impairment were found for land and buildings.

No land or buildings are expected to be sold or disposed of within the next 12 months.

**Note 6B: Property, Plant and Equipment****Other property, plant and equipment:**

Fair value	1,505	1,012
Accumulated depreciation	(627)	(440)
<b>Total other property, plant and equipment</b>	<b>878</b>	<b>572</b>
<b>Total property, plant and equipment</b>	<b>878</b>	<b>572</b>

No indicators of impairment were found for property, plant and equipment.

**Note 6C: Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment (2010-11)**

	Buildings \$'000	Other property, plant & equipment \$'000	Total \$'000
<b>As at 1 July 2010</b>			
Gross book value	1,595	1,012	2,607
Accumulated depreciation and impairment	(86)	(440)	(526)
<b>Net book value 1 July 2010</b>	<b>1,509</b>	<b>572</b>	<b>2,081</b>
Additions	211	529	740
Depreciation expense	(466)	(223)	(689)
Disposals:			
Other	-	(1)	(1)
<b>Net book value 30 June 2011</b>	<b>1,254</b>	<b>878</b>	<b>2,132</b>
<b>Net book value as of 30 June 2011 represented by:</b>			
Gross book value	1,806	1,505	3,311
Accumulated depreciation and impairment	(552)	(627)	(1,179)
<b>Net book value 30 June 2011</b>	<b>1,254</b>	<b>878</b>	<b>2,132</b>

**Note 6C (Cont'd): Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment (2009-10)**

	Buildings \$'000	Other property, plant & equipment \$'000	Total \$'000
<b>As at 1 July 2009</b>			
Gross book value	4,007	778	4,785
Accumulated depreciation and impairment	(2,042)	(233)	(2,275)
<b>Net book value 1 July 2009</b>	<b>1,965</b>	<b>545</b>	<b>2,510</b>
Additions	39	243	282
Revaluations recognised in the operating result	(29)	-	(29)
Depreciation expense	(466)	(212)	(678)
Disposals:			
Other	-	(4)	(4)
<b>Net book value 30 June 2010</b>	<b>1,509</b>	<b>572</b>	<b>2,081</b>
<b>Net book value as of 30 June 2010 represented by:</b>			
Gross book value	1,595	1,012	2,607
Accumulated depreciation and impairment	(86)	(440)	(526)
	1,509	572	2,081

## NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

<b>Note 6D: Intangibles</b>	<b>2011</b>	<b>2010</b>
	<b>\$'000</b>	<b>\$'000</b>
<b>Computer software:</b>		
Internally developed – in use	5,195	4,797
Purchased	836	787
Accumulated amortisation	(3,615)	(3,162)
<b>Total computer software</b>	<b>2,416</b>	<b>2,422</b>
<b>Total intangibles</b>	<b>2,416</b>	<b>2,422</b>

No indicators of impairment were found for intangible assets.

No intangibles are expected to be sold or disposed of within the next 12 months.

### **Note 6E: Reconciliation of the Opening and Closing Balances of Intangibles (2010-11)**

	<b>Computer software internally developed</b>	<b>Computer software purchased</b>	<b>Total</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>As at 1 July 2010</b>			
Gross book value	4,797	787	5,584
Accumulated amortisation and impairment	(2,530)	(632)	(3,162)
<b>Net book value 1 July 2010</b>	<b>2,267</b>	<b>155</b>	<b>2,422</b>
Additions*	398	62	460
Disposals:			
Other	-	-	-
Amortisation	(418)	(48)	(466)
<b>Net book value 30 June 2011</b>	<b>2,247</b>	<b>169</b>	<b>2,416</b>
<b>Net book value as of 30 June 2011 represented by:</b>			
Gross book value	5,195	836	6,031
Accumulated amortisation and impairment	(2,948)	(667)	(3,615)
	<b>2,247</b>	<b>169</b>	<b>2,416</b>

\* Disaggregated additions information is disclosed in the Schedule of Asset Additions.

### **Note 6E (Cont'd): Reconciliation of the Opening and Closing Balances of Intangibles (2009-10)**

	<b>Computer software internally developed</b>	<b>Computer software purchased</b>	<b>Total</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>As at 1 July 2009</b>			
Gross book value	4,651	776	5,427
Accumulated amortisation and impairment	(1,941)	(565)	(2,506)
<b>Net book value 1 July 2009</b>	<b>2,710</b>	<b>211</b>	<b>2,921</b>
Additions:			
Purchased	-	11	11
Internally developed	146	-	146
Amortisation	(589)	(67)	(656)
<b>Net book value 30 June 2010</b>	<b>2,267</b>	<b>155</b>	<b>2,422</b>
<b>Net book value as of 30 June 2010 represented by:</b>			
Gross book value	4,797	787	5,584
Accumulated amortisation and impairment	(2,530)	(632)	(3,162)
	<b>2,267</b>	<b>155</b>	<b>2,422</b>

<b>Note 6F: Other Non-Financial Assets</b>	<b>2011</b>	<b>2010</b>
	<b>\$'000</b>	<b>\$'000</b>
Prepayments	199	203
<b>Total other non-financial assets</b>	<b>199</b>	<b>203</b>

**Total other non-financial assets - are expected to be recovered in:**

No more than 12 months	<u>199</u>	<u>203</u>
<b>Total other non-financial assets</b>	<b><u>199</u></b>	<b><u>203</u></b>

No indicators of impairment were found for other non-financial assets.

## Note 7: Payables

	2011	2010
	\$'000	\$'000
<b>Note 7: Suppliers</b>		
Trade creditors and accruals	<u>1,090</u>	<u>648</u>
<b>Total supplier payables</b>	<b><u>1,090</u></b>	<b><u>648</u></b>
<b>Supplier payables expected to be settled within 12 months:</b>		
Related entities	308	112
External parties	<u>782</u>	<u>536</u>
<b>Total</b>	<b><u>1,090</u></b>	<b><u>648</u></b>
<b>Total supplier payables</b>	<b><u>1,090</u></b>	<b><u>648</u></b>

Settlement was usually made within 30 days.

## NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

### Note 8: Interest Bearing Liabilities

	2011	2010
	\$'000	\$'000

#### Note 8: Leases

Finance leases	1,394	1,904
<b>Total finance leases</b>	<b>1,394</b>	<b>1,904</b>

#### **Payable:**

Within one year:

Minimum lease payments	611	611
Deduct: future finance charges	(65)	(101)

In one to five years:

Minimum lease payments	874	1,486
Deduct: future finance charges	(26)	(92)

<b>Finance leases recognised on the balance sheet</b>	<b>1,394</b>	<b>1,904</b>
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Finance leases exist in relation to the fitout of the Melbourne office. The leases are non-cancellable and for a fixed term of 10 years. The interest rate in the lease is 9.31%. There are no contingent rentals.

### Note 9: Provisions

	2011	2010
	\$'000	\$'000

#### Note 9: Employee Provisions

Leave	5,527	5,018
Other	1,633	1,689
<b>Total employee provisions</b>	<b>7,160</b>	<b>6,707</b>

**Employee provisions are expected to be settled in:**

No more than 12 months	3,506	3,164
More than 12 months	3,654	3,543
<b>Total employee provisions</b>	<b>7,160</b>	<b>6,707</b>

## Note 10: Cash Flow Reconciliation

	2011	2010
	\$'000	\$'000
<b>Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement</b>		
<b>Cash and cash equivalents as per:</b>		
Cash flow statement	125	49
Balance sheet	125	49
<b>Difference</b>	<b>-</b>	<b>-</b>
<b>Reconciliation of net cost of services to net cash from operating activities:</b>		
Net cost of services	(45,577)	(44,667)
Add revenue from Government	42,932	40,062
<b>Adjustments for non-cash items</b>		
Depreciation / amortisation	1,155	1,334
Net write down of non-financial assets	-	29
Loss on disposal of assets	1	2
<b>Changes in assets / liabilities</b>		
(Increase) / decrease in net receivables	1,419	2,279
(Increase) / decrease in prepayments	4	91
Increase / (decrease) in employee provisions	453	908
Increase / (decrease) in supplier payables	199	(129)
Increase / (decrease) in other payable	-	952
<b>Net cash from (used by) operating activities</b>	<b>586</b>	<b>861</b>

## Note 11: Contingent Liabilities and Assets

### Quantifiable Contingencies

There are no quantifiable contingent liabilities or assets at 30 June 2011 (2010: Nil).

### Unquantifiable Contingencies

The MRT-RRT had no legal claims against it at 30 June 2011 (2010: Nil).





### Note 13: Remuneration of Auditors

	2011	2010
	\$'000	\$'000
Financial statement audit services were provided free of charge to the entity.	38	55
<b>Fair value of the services provided:</b>	<u>38</u>	<u>55</u>

No other services were provided by the auditors of the financial statements.

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

## Note 14: Financial Instruments

	2011	2010
	\$'000	\$'000

### Note 14A: Categories of Financial Instruments

#### Financial Assets

##### Loans and receivables:

Cash and cash equivalents	125	49
Loans and Receivables	256	72
<b>Total</b>	<b>381</b>	<b>121</b>

<b>Carrying amount of financial assets</b>	<b>381</b>	<b>121</b>
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#### Financial Liabilities

##### At amortised cost:

Finance lease	1,394	1,904
Other Liabilities - Suppliers	1,090	648
<b>Total</b>	<b>2,484</b>	<b>2,552</b>

<b>Carrying amount of financial liabilities</b>	<b>2,484</b>	<b>2,552</b>
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### Note 14B: Expense from Financial Liabilities

#### Financial liabilities - at amortised cost

Interest expense	(101)	(133)
<b>Net (loss) from financial liabilities - at amortised cost</b>	<b>(101)</b>	<b>(133)</b>

### Note 14C: Fair Value of Financial Instruments

	Carrying amount	Fair value	Carrying amount	Fair value
	2011	2011	2010	2010
	\$'000	\$'000	\$'000	\$'000
<b>Financial Assets</b>				
Cash and cash equivalents	125	125	49	49
Loans and Receivables	256	256	72	72
<b>Total</b>	<b>381</b>	<b>381</b>	<b>121</b>	<b>121</b>
<b>Financial Liabilities</b>				
Finance lease	1,394	1,349	1,904	1,831
Other Liabilities - Suppliers	1,090	1,090	648	648
<b>Total</b>	<b>2,484</b>	<b>2,439</b>	<b>2,552</b>	<b>2,479</b>

Fair value for each class of financial assets and financial liabilities is determined at market value.

### Note 14D: Credit Risk

The MRT-RRT's maximum exposure to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Balance Sheet.

The MRT-RRT has no significant exposures to any concentrations of credit risk.

All figures for credit risk referred to do not take into account the value of any collateral or other security.

### Note 14E: Liquidity Risk

The MRT-RRT financial liabilities are payables, loans from government and finance leases. The exposure to liquidity risk is based on the notion that the MRT-RRT will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely due to appropriation funding and mechanisms available to the MRT-RRT (e.g. Advance to the Finance Minister) and internal policies and procedures put in place to ensure there are appropriate resources to meet its financial obligations.

**Note 14F: Market Risk**

The MRT-RRT holds a fixed lease at 9.31% for leasehold property and is not exposed to market risks. The MRT-RRT is not exposed to 'Currency risk' or 'Other price risk'.

**Note 15: Income Administered on Behalf of Government**

	2011	2010
	\$'000	\$'000
<b>REVENUE</b>		
<b>Non-Taxation Revenue</b>		
<b>Note 15: Other Revenue</b>		
Other - MRT application fees	12,815	10,291
Other - RRT post decision fees	2,857	2,352
<b>Total other revenue</b>	<b>15,672</b>	<b>12,643</b>
<b>Total income administered on behalf of Government</b>	<b>15,672</b>	<b>12,643</b>

**Note 16: Expenses Administered on Behalf of Government**

	2011	2010
	\$'000	\$'000
<b>EXPENSES</b>		
<b>Note 16A: Write-down and Impairment of assets</b>		
Write-down and impairments from:		
Bad debts - RRT fees	1,574	1,546
<b>Total write-down and impairment of assets</b>	<b>1,574</b>	<b>1,546</b>
<b>Note 16B: Other</b>		
Refund of fees	4,234	5,291
<b>Total other expenses</b>	<b>4,234</b>	<b>5,291</b>

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

## Note 17: Assets Administered on Behalf of Government

	2011 \$'000	2010 \$'000
<b>FINANCIAL ASSETS</b>		
<b>Note 17A: Cash and Cash Equivalents</b>		
Cash on hand or on deposit	86	59
<b>Total cash and cash equivalents</b>	<b>86</b>	<b>59</b>
<b>Note 17B: Trade and Other Receivables</b>		
<b>Other receivables:</b>		
Fees	3,154	1,311
<b>Total other receivables</b>	<b>3,154</b>	<b>1,311</b>
<b>Total trade and other receivables (gross)</b>	<b>3,154</b>	<b>1,311</b>
<b>Less: impairment allowance account:</b>		
Other	1,849	562
<b>Total impairment allowance account</b>	<b>1,849</b>	<b>562</b>
<b>Total trade and other receivables (net)</b>	<b>1,305</b>	<b>749</b>
<b>Receivables are expected to be recovered in:</b>		
No more than 12 months	1,305	749
More than 12 months	-	-
<b>Total trade and other receivables (net)</b>	<b>1,305</b>	<b>749</b>
<b>Receivables were aged as follows:</b>		
Not overdue	317	234
Overdue by:		
0 to 30 days	215	223
31 to 60 days	169	164
61 to 90 days	187	207
More than 90 days	2,266	483
<b>Total receivables (gross)</b>	<b>3,154</b>	<b>1,311</b>
<b>The impairment allowance account is aged as follows:</b>		
Not overdue	-	-
Overdue by:		
0 to 30 days	2	-
31 to 60 days	5	2
61 to 90 days	6	185
More than 90 days	1,836	375
<b>Total impairment allowance account</b>	<b>1,849</b>	<b>562</b>
<b>Reconciliation of the Impairment Allowance Account:</b>		
<b>Movements in relation to 2011</b>		
	<b>Other receivables \$'000</b>	<b>Total \$'000</b>
<b>Opening balance</b>	<b>562</b>	<b>562</b>
Increase/decrease recognised in net surplus	743	743
<b>Closing balance</b>	<b>1,305</b>	<b>1,305</b>

Movements in relation to 2010		
	Other receivables \$'000	Total \$'000
<b>Opening balance</b>	656	656
Increase/decrease recognised in net surplus	(94)	(94)
<b>Closing balance</b>	562	562

#### Note 18: Liabilities Administered on Behalf of Government

	2011 \$'000	2010 \$'000
<b>PAYABLES</b>		
<b>Note 18: Other Payables</b>		
Other	-	-
<b>Total other payables</b>	-	-

#### Note 19: Administered Reconciliation Table

	2011 \$'000	2010 \$'000
<b>Opening administered assets less administered liabilities as at 1 July</b>	<b>808</b>	523
Adjustment for prior year roundings	(2)	(6)
<b>Adjusted opening administered assets less administered liabilities</b>	<b>806</b>	517
Plus: Administered income	15,672	12,643
Less: Administered expenses	(5,808)	(6,837)
Administered transfers to/from Australian Government:		
Appropriation transfers from OPA:		
Annual appropriations for administered expenses	4,234	5,340
Transfers to OPA	(13,513)	(10,855)
<b>Closing administered assets less administered liabilities as at 30 June</b>	<b>1,391</b>	808

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

## Note 20: Administered Contingent Assets and Liabilities

### Quantifiable Administered Contingencies

At 30 June 2011, the MRT-RRT had no contingent assets or contingent liabilities (2010: Nil).

### Unquantifiable Administered Contingencies

At 30 June 2011, the MRT-RRT had no legal claims against it (2010: Nil).

## Note 21: Administered Financial Instruments

	2011	2010
	\$'000	\$'000

### Note 21A: Categories of Financial Instruments

#### Financial Assets

Cash	86	59
Loans and Receivables	1,305	749
<b>Carrying amount of financial assets</b>	<b>1,391</b>	<b>808</b>

### Note 21B: Fair Value of Financial Instruments

	Carrying amount 2011 \$'000	Fair value 2011 \$'000	Carrying amount 2010 \$'000	Fair value 2010 \$'000
<b>Financial Assets</b>				
Cash on hand	86	86	59	59
Loans and receivables	1,305	1,305	749	749
<b>Total</b>	<b>1,391</b>	<b>1,391</b>	<b>808</b>	<b>808</b>

### Note 21C: Credit Risk

The MRT-RRT is not exposed to credit risk at reporting date in relation to each class of recognised financial assets.

### Note 21D: Liquidity Risk

The MRT-RRT has no financial liabilities and is not exposed to liquidity risk.

### Note 21E: Market Risk

The MRT-RRT is not exposed to market risk.

## Note 22: Appropriations

**Table A: Annual Appropriations ('Recoverable GST exclusive')**

	2011 Appropriations			Appropriation applied in 2011 (current and prior years) S'000	Variance S'000
	<i>Appropriation Act</i>	<i>FMA Act</i>	Total appropriation S'000		
	Annual Appropriation S'000	Section 31 S'000			
<b>DEPARTMENTAL</b>					
<b>Ordinary annual services</b>	43,218	130	43,348	45,524	(2,176)
<b>Other services</b>					
Equity	80	-	80	80	-
<b>Total departmental</b>	<b>43,298</b>	<b>130</b>	<b>43,428</b>	<b>45,604</b>	<b>(2,176)</b>

**Notes:**

(a) Departmental appropriations do not lapse at financial year-end. However, the responsible Minister may decide that part or all of a departmental appropriation is not required and request that the Finance Minister reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament.

(b) An adjustment has been made to increase appropriation for surplus in caseload totalling \$1.618m in 2010/11. This adjustment met the recognition criteria of a formal addition in revenue (in accordance with FMO Div 101) but at law the appropriations had not been amended before the end of the reporting period.

(c) The Minister of Finance and Deregulation had approved an operating loss of \$4.426m for 2010-11. The operating loss was funded from appropriations accumulated from previous years.

	2010 Appropriations			Appropriation applied in 2010 (current and prior years) S'000	Variance S'000
	<i>Appropriation Act</i>	<i>FMA Act</i>	Total appropriation S'000		
	Annual Appropriation S'000	Section 31 S'000			
<b>DEPARTMENTAL</b>					
<b>Ordinary annual services</b>	41,014	49	41,063	43,454	(2,391)
<b>Total departmental</b>	<b>41,014</b>	<b>49</b>	<b>41,063</b>	<b>43,454</b>	<b>(2,391)</b>

**Notes:**

(a) Departmental appropriations do not lapse at financial year-end. However, the responsible Minister may decide that part or all of a departmental appropriation is not required and request that the Finance Minister reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament.

(b) An adjustment has been made to reduce appropriation for a shortfall in caseload totalling \$0.983m in 2009/10. This adjustment has met the recognition criteria of a formal reduction in revenue (in accordance with FMO Div 101) but at law the appropriations had not been amended before the end of the reporting period.

(c) The Minister of Finance and Deregulation had approved an operating loss of \$2.825m for 2009-10. The operating loss was funded from appropriations accumulated from previous years.

**Table B: Unspent Departmental Annual Appropriations ('Recoverable GST exclusive')**

Authority	2011 S'000	2010 S'000
Appropriation Act No 1 (2006/07)	815	815
Appropriation Act No 1 (2007/08)	2,278	2,278
Appropriation Act No 1 (2008/09)	1,540	1,540
Appropriation Act No 1 (2009/10)	983	7,956
Appropriation Act No 1 (2010/11)	4,797	-
<b>Sub-total</b>	<b>10,413</b>	<b>12,589</b>

Note that 2010 comparative figures have been adjusted to include amounts that met the recognition criteria for formal reductions in revenue but where at law the appropriations had not been amended.

**Table C: Special Appropriations ('Recoverable GST exclusive')**

Authority	Type	Purpose	Appropriation applied	
			2011 S'000	2010 S'000
FMA Act S28	Refund	Refund of MRT application fees	4,201	5,288
FMA Act S28	Refund	Refund of RRT application fees	33	52
<b>Total</b>			<b>4,234</b>	<b>5,340</b>

The MRT-RRT has recently become aware that there is an increased risk of non-compliance with Section 83 of the Constitution where payments are made from special appropriations and special accounts in circumstances where the payments do not accord with conditions included in the relevant legislation. The MRT-RRT will investigate these circumstances and any impact on its special appropriations shown above seeking legal advice as appropriate.

## NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

### Note 23: Compensation and Debt Relief

Compensation and Debt Relief - Administered (FMA Act only)	2011	2010
	\$	\$
No 'Act of Grace' payments were expensed during the reporting period (2010: Nil payments).	-	-
39 waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the Financial Management and Accountability Act 1997 (2010: 2 waivers).	<b>54,600</b>	2,000
474 waivers of amounts owing to the Australian Government were made pursuant to Regulation 4.13(4) of the Migration Regulations 1994 (2010: 490 waivers).	<b>663,600</b>	686,000



**Note 24: Reporting of Outcomes****Note 24A: Net Cost of Outcome Delivery**

	Outcome 1	
	2011 S'000	2010 S'000
<b>Expenses</b>		
Administered	5,808	6,837
Departmental	45,965	44,777
<b>Total</b>	<b>51,773</b>	<b>51,614</b>
<b>Income from non-government sector</b>		
Administered		
Other	15,672	12,643
<b>Total administered</b>	<b>15,672</b>	<b>12,643</b>
Departmental		
Other	-	-
<b>Total departmental</b>	<b>-</b>	<b>-</b>
<b>Total</b>	<b>15,672</b>	<b>12,643</b>
<b>Other own-source income</b>		
Administered	-	-
Departmental	388	110
<b>Total</b>	<b>388</b>	<b>110</b>
<b>Net cost/(contribution) of outcome delivery</b>	<b>35,713</b>	<b>38,861</b>

Outcome 1 is described in Note 1.1. Net costs shown included intra-government costs that were eliminated in calculating the actual Budget Outcome.

**Note 24B: Major Classes of Departmental Expense, Income, Assets and Liabilities by Outcome**

	Outcome 1	
	2011 S'000	2010 S'000
<b>Departmental Expenses:</b>		
Employees	35,201	33,981
Suppliers	9,507	9,298
Depreciation and Amortisation	1,155	1,334
Finance costs	101	133
Write-down and impairment of assets	-	29
Other Expenses	1	2
<b>Total</b>	<b>45,965</b>	<b>44,777</b>
<b>Departmental Income:</b>		
Income from government	42,932	40,062
Rendering of services	388	110
<b>Total</b>	<b>43,320</b>	<b>40,172</b>
<b>Departmental Assets</b>		
Financial Assets	6,890	7,207
Non-Financial Assets	4,747	4,706
<b>Total</b>	<b>11,637</b>	<b>11,913</b>
<b>Departmental Liabilities</b>		
Payables	1,090	648
Interest Bearing Liabilities	1,394	1,904
Provisions	7,160	6,707
<b>Total</b>	<b>9,644</b>	<b>9,259</b>

**Note 24C: Major Classes of Administered Expenses, Income, Assets and Liabilities by Outcome**

	Outcome 1	
	2011 S'000	2010 S'000
<b>Administered expenses</b>		
Write down and impairment of assets	1,574	1,546
Other Expenses - refund of application fees	4,234	5,291
<b>Total</b>	<b>5,808</b>	<b>6,837</b>
<b>Administered income</b>		
Other non-tax revenue	15,672	12,643
<b>Total</b>	<b>15,672</b>	<b>12,643</b>
<b>Administered assets</b>		
Financial assets	1,391	808
<b>Total</b>	<b>1,391</b>	<b>808</b>
<b>Administered liabilities</b>		
Other	-	-
<b>Total</b>	<b>-</b>	<b>-</b>

## NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

### Note 25: Comprehensive Income (Loss) attributable to the entity

	2011 \$'000	2010 \$'000
<b>Total Comprehensive Income (loss) attributable to the entity</b>		
Total comprehensive (loss)*	(2,645)	(4,605)
Plus: non-appropriated expenses		
Depreciation and amortisation expenses	<u>1,155</u>	<u>-</u>
<b>Total comprehensive income (loss) attributable to the entity</b>	<u>(1,490)</u>	<u>(4,605)</u>

\* As per the Statement of Comprehensive Income.



# APPENDICES

TO PROVIDE VISA APPLICANTS AND SPONSORS WITH INDEPENDENT, FAIR, JUST,  
ECONOMICAL, INFORMAL AND QUICK REVIEWS OF MIGRATION AND REFUGEE DECISIONS

# APPENDIX 1 – MEMBERSHIP

The tribunals' members make decisions on applications for review. The members are appointed under the *Migration Act 1958* by the Governor-General for fixed terms on a full-time or part-time basis. The Remuneration Tribunal determines the remuneration arrangements for members.

While there are no mandatory qualifications for the appointment of members, persons appointed as members to the tribunals have typically

worked in a profession or have had extensive experience at senior levels in the private or public sector. Member biographies are available on the tribunals' website.

A list of members and their appointment periods as at 1 July 2011 is set out below.

The first appointment date reflects the date from which there have been continuing appointments to the MRT, the RRT or both tribunals.

Member	Office	Appointed	Current appointment expires	Gender	Location
Mr Denis O'Brien	Principal Member	3 Sep 2007	30 Jun 2012	M	Sydney
Ms Amanda MacDonald	Deputy Principal Member	1 Dec 2000	31 Mar 2015	F	Sydney
Mr John Billings	Senior Member	1 Jul 2011	30 Jun 2016	M	Melbourne
Mr John Cipolla	Senior Member	1 Feb 2000	30 Jun 2016	M	Sydney
Ms Linda Kirk	Senior Member	1 Jan 2009	31 Dec 2013	F	Melbourne
Mr Peter Murphy	Senior Member	1 Jan 2009	31 Dec 2013	M	Melbourne
Dr Irene O'Connell*	Senior Member	28 Aug 2000	31 Dec 2013	F	Sydney
Ms Kira Raif	Senior Member	1 Jul 2006	30 Jun 2016	F	Sydney
Mr Shahyar Roushan	Senior Member	1 Oct 2001	30 Jun 2016	M	Sydney

Member	Office	Appointed	Current appointment expires	Gender	Location
Mr Giles Short	Senior Member	28 Jul 1997	31 Dec 2013	M	Sydney
Mr Donald Smyth	Senior Member	14 Jul 2003	30 Jun 2016	M	Brisbane
Dr Jennifer Beard	Full-time Member	1 Jul 2009	30 Jun 2014	F	Melbourne
Ms Danica Buljan	Full-time Member	1 Oct 2001	30 Jun 2015	F	Melbourne
Mr Tony Caravella	Full-time Member	1 Jul 2009	30 Jun 2014	M	Perth
Ms Ruth Cheetham	Full-time Member	1 Jul 2011	30 Jun 2016	F	Sydney
Ms Denise Connolly	Full-time Member	1 Jul 2010	30 Jun 2015	F	Sydney
Mr Richard Derewlany	Full-time Member	1 Oct 2001	30 Jun 2015	M	Sydney
Ms Dione Dimitriadis	Full-time Member	14 Jul 2003	30 Jun 2014	F	Sydney
Mr Antonio Dronjic	Full-time Member	1 Jul 2011	30 Jun 2016	M	Melbourne
Mr Alan Duri	Full-time Member	1 Jul 2011	30 Jun 2016	M	Sydney
Ms Suseela Durvasula	Full-time Member	1 Oct 2001	30 Jun 2015	F	Sydney
Mr Paul Fisher	Full-time Member	1 Jul 2006	30 Jun 2014	M	Melbourne
Mr Patrick Francis	Full-time Member	1 Jul 2010	30 Jun 2015	M	Melbourne
Ms Maria Rosa Gagliardi*	Full-time Member	31 Jul 2006	30 Jun 2014	F	Melbourne
Ms Michelle Grau	Full-time Member	1 Jul 2010	30 Jun 2015	F	Brisbane
Mr George Haddad	Full-time Member	1 Jul 2006	30 Jun 2014	M	Melbourne
Mr Ismail Hasan	Full-time Member	1 Jul 2009	30 Jun 2014	M	Sydney

Member	Office	Appointed	Current appointment expires	Gender	Location
Ms Margret Holmes	Full-time Member	1 Jul 2009	30 Jun 2014	F	Melbourne
Mr Simon Jeans	Full-time Member	1 Jul 2010	30 Jun 2015	M	Sydney
Mr Dominic Lennon*	Full-time Member	14 Jul 2003	30 Jun 2014	M	Melbourne
Mr Donald Lucas	Full-time Member	1 Jul 2011	30 Jun 2016	M	Melbourne
Ms Alison Mercer	Full-time Member	1 Jul 2011	30 Jun 2016	F	Melbourne
Mr Paul Millar	Full-time Member	1 Jul 2010	30 Jun 2015	M	Sydney
Mr David Mitchell	Full-time Member	7 Jul 1999	30 Jun 2015	M	Melbourne
Mr Adam Moore	Full-time Member	1 Jul 2010	30 Jun 2015	M	Melbourne
Ms Louise Nicholls	Full-time Member	31 Oct 2001	30 Jun 2015	F	Sydney
Mr Charles Powles	Full-time Member	1 Jul 2010	30 Jun 2015	M	Melbourne
Mr Andrew Rozdilsky	Full-time Member	1 Jul 2010	30 Jun 2015	M	Sydney
Mr Hugh Sanderson	Full-time Member	1 Jul 2011	30 Jun 2016	M	Sydney
Ms Wan Shum	Full-time Member	1 Jul 2011	30 Jun 2016	F	Sydney
Mr James Silva	Full-time Member	14 Jul 2003	30 Jun 2014	M	Sydney
Mr Chris Smolicz	Full-time Member	1 Jul 2011	30 Jun 2016	M	Adelaide
Ms Jan Spiers	Full-time Member	1 Jul 2011	30 Jun 2016	F	Brisbane
Mr Fraser Syme	Full-time Member	1 Jul 2011	30 Jun 2016	M	Brisbane
Ms Linda Symons	Full-time Member	1 Jul 2006	30 Jun 2014	F	Sydney

Member	Office	Appointed	Current appointment expires	Gender	Location
Mrs Mary Urquhart	Full-time Member	1 Jul 2006	30 Jun 2014	F	Melbourne
Mr Robert Wilson	Full-time Member	1 Jul 2002	30 Jun 2015	M	Sydney
Mr Sean Baker	Part-time Member	1 Jul 2011	30 Jun 2016	M	Sydney
Ms Diane Barnettson	Part-time Member	1 Jul 2006	30 Jun 2014	F	Sydney
Ms Wendy Boddison*	Part-time Member	28 Jul 1997	30 Jun 2015	F	Melbourne
Ms Margie Bourke	Part-time Member	1 Jul 2011	30 Jun 2016	F	Melbourne
Ms Melissa Bray	Part-time Member	1 Jul 2010	30 Jun 2015	F	Melbourne
Ms Nicole Burns	Part-time Member	1 Jul 2007	30 Jun 2015	F	Melbourne
Ms Mary Cameron	Part-time Member	1 Jul 2006	30 Jun 2014	F	Melbourne
Ms Catherine Carney-Osborn	Part-time Member	1 Jul 2006	30 Jun 2014	F	Sydney
Ms Jennifer Ciantar	Part-time Member	14 Jul 2003	30 Jun 2014	F	Sydney
Ms Christine Cody	Part-time Member	1 Jul 2010	30 Jun 2015	F	Sydney
Mr Timothy Connellan	Part-time Member	1 Jul 2007	30 Jun 2015	M	Melbourne
Mr Clyde Cosentino	Part-time Member	1 Jul 2007	30 Jun 2015	M	Brisbane
Ms Angela Cranston	Part-time Member	14 Jul 2003	30 Jun 2014	F	Sydney
Mr Glen Cranwell	Part-time Member	1 Jul 2009	30 Jun 2014	M	Brisbane
Ms Gabrielle Cullen	Part-time Member	1 Jul 2006	30 Jun 2014	F	Sydney
Ms Megan Deane	Part-time Member	23 Mar 2000	30 Jun 2015	F	Sydney

Member	Office	Appointed	Current appointment expires	Gender	Location
Mr Ted Delofski	Part-time Member	1 Oct 2001	30 Jun 2015	M	Sydney
Mr David Dobell	Part-time Member	1 Jul 2006	30 Jun 2014	M	Sydney
Mr Jonathon Duignan	Part-time Member	8 Jan 2001	30 Jun 2015	M	Sydney
Ms Jennifer Ellis	Part-time Member	15 Jun 1999	30 Jun 2015	F	Melbourne
Ms Jennifer Eutick	Part-time Member	1 Jul 2010	30 Jun 2015	F	Brisbane
Ms Bronwyn Forsyth	Part-time Member	25 Sep 2006	30 Jun 2014	F	Sydney
Ms Mila Foster	Part-time Member	14 Jul 2003	30 Jun 2014	F	Sydney
Mr Steve Georgiadis	Part-time Member	1 Jul 2011	30 Jun 2016	M	Adelaide
Mr Brook Hely	Part-time Member	1 Jul 2009	30 Jun 2014	M	Melbourne
Ms Diane Hubble	Part-time Member	1 Jul 2006	30 Jun 2014	F	Melbourne
Ms Lesley Hunt	Part-time Member	1 Jul 2011	30 Jun 2016	F	Brisbane
Ms Sally Hunt	Part-time Member	1 Jul 2010	30 Jun 2015	F	Sydney
Ms Rowena Irish	Part-time Member	1 Jul 2010	30 Jun 2015	F	Sydney
Ms Naida Isenberg	Part-time Member	1 Jul 2011	30 Jun 2016	F	Sydney
Mr Andrew Jacovides	Part-time Member	19 Sep 1993	30 Jun 2015	M	Sydney
Ms Deborah Jordan	Part-time Member	1 Jul 2007	30 Jun 2015	F	Melbourne
Ms Suhad Kamand	Part-time Member	1 Jul 2009	30 Jun 2014	F	Sydney
Ms Josephine Kelly	Part-time Member	1 Jul 2011	30 June 2016	F	Sydney



Member	Office	Appointed	Current appointment expires	Gender	Location
Mr Marten Kennedy	Part-time Member	1 Jul 2011	30 Jun 2016	M	Adelaide
Ms Kay Kirmos	Part-time Member	14 Jul 2003	30 Jun 2014	F	Brisbane
Mr Anthony Krohn	Part-time Member	1 Jul 2010	30 Jun 2015	M	Melbourne
Ms Suzanne Leal	Part-time Member	1 Oct 2001	30 Jun 2015	F	Sydney
Mr Gary Ledson	Part-time Member	1 Jul 2007	30 Jun 2015	M	Melbourne
Ms Patricia Leehy	Part-time Member	28 Jul 1997	30 Jun 2015	F	Sydney
Ms Christine Long	Part-time Member	14 Jul 2003	30 Jun 2014	F	Sydney
Mr Bruce MacCarthy	Part-time Member	1 Jul 2009	30 Jun 2014	M	Sydney
Ms Jane Marquard*	Part-time Member	1 Jul 2006	30 Jun 2014	F	Sydney
Ms Rosemary Mathlin	Part-time Member	1 Jul 1993	30 Jun 2015	F	Sydney
Ms Philippa McIntosh*	Part-time Member	5 Sep 1993	30 Jun 2015	F	Sydney
Ms Vanessa Moss	Part-time Member	1 Jul 2010	30 Jun 2015	F	Perth
Ms Mara Moustafine*	Part-time Member	1 Jul 2009	30 Jun 2014	F	Sydney
Mrs Sydelle Muling	Part-time Member	14 Jul 2003	30 Jun 2014	F	Melbourne
Mr Andrew Mullin	Part-time Member	14 Jul 2003	30 Jun 2014	M	Sydney
Ms Alison Murphy	Part-time Member	1 Jul 2010	30 Jun 2015	F	Melbourne
Ms Ann O'Toole	Part-time Member	14 Jul 2003	30 Jun 2014	F	Sydney
Ms Sophia Panagiotidis	Part-time Member	1 Jul 2011	30 Jun 2016	F	Melbourne

Member	Office	Appointed	Current appointment expires	Gender	Location
Ms Susan Pinto	Part-time Member	14 Jul 2003	30 Jun 2014	F	Sydney
Ms Pauline Pope	Part-time Member	14 Jul 2003	30 Jun 2014	F	Sydney
Ms Rania Skaros	Part-time Member	1 Jul 2011	30 Jun 2016	F	Sydney
Ms Meena Sripathy	Part-time Member	1 Jul 2011	30 Jun 2016	F	Sydney
Ms Pamela Summers	Part-time Member	1 Jul 2009	30 Jun 2014	F	Sydney
Ms Karen Synon	Part-time Member	1 Oct 2001	30 Jun 2015	F	Melbourne
Mr Peter Tyler*	Part-time Member	1 Jul 2007	30 Jun 2015	M	Melbourne
Ms Alexis Wallace	Part-time Member	1 Jul 2011	30 Jun 2016	F	Brisbane
Ms Phillippa Wearne	Part-time Member	1 Jul 2006	30 Jun 2014	F	Sydney
Ms Belinda Wells	Part-time Member	1 Jul 2009	30 Jun 2014	F	Adelaide
Ms Carolyn Wilson	Part-time Member	1 Jul 2009	30 Jun 2014	F	Adelaide
Mr David Young	Part-time Member	14 Jul 2003	30 Jun 2014	M	Melbourne
Ms Kirsten Young	Part-time Member	1 Jul 2011	30 Jun 2016	F	Melbourne

\* On leave of absence at the Independent Protection Assessment Office (IPAO) or in the case of part-time members, working on IPAO matters.

# APPENDIX 2 – FREEDOM OF INFORMATION

## INTRODUCTION

From 1 May 2011, as agencies subject to the *Freedom of Information Act 1982* (the FOI Act), the tribunals are required to publish information to the public as part of the Information Publication Scheme (IPS). This requirement has replaced the former requirement to publish a section 8 statement. The tribunals' plan showing what information is published in accordance with the IPS requirements is accessible from the tribunals' website.

Section 8 of the FOI Act, as it was in force prior to 1 May 2011, required each Australian Government agency to publish information about the way it was organised, and its functions, powers, and arrangements for public participation in the work of the agency. Agencies were also required to publish the categories of documents held and how members of the public could gain access to such documents.

The following statement is published to meet the requirements of section 8 for the period 1 July 2010 to 30 April 2011. This statement is correct as at 30 June 2011 and should be read in conjunction with the more detailed information in the rest of this Annual Report.

## ESTABLISHMENT

The tribunals are established under the *Migration Act 1958*. The MRT commenced on 1 June 1999 and the RRT commenced on 1 July 1993.

## ORGANISATION

The organisational structure of the tribunals is described in Parts 2 and 4 of this Report.

## FUNCTIONS

The tribunals conduct independent final merits reviews of visa and visa-related decisions made under the Migration Act and Migration Regulations. The tribunals are required to provide a mechanism of review that is fair, just, economical, informal and quick.

## POWERS

The tribunals have the power to affirm, vary or set aside a decision under review, to remit (return) a matter to the Department for reconsideration in accordance with permissible directions, or to substitute a new decision. They have powers to conduct investigations, to summon witnesses and documents and to take evidence on oath or affirmation.

## ARRANGEMENTS FOR OUTSIDE PARTICIPATION

Decisions are made by the MRT or the RRT as formally constituted under the Migration Act for a particular case.

Review applicants are entitled to give written arguments and written statements relating to the facts and issues arising in their review applications, and may appear before the MRT or the RRT to present arguments and give oral evidence. The Secretary of the Department is entitled to give the tribunals written arguments relating to the issues arising in a review application.

The MRT-RRT Community Liaison Meetings provide a forum for the tribunals to meet, exchange information with and consult interested stakeholders. Representatives who attend the meetings come from migration and refugee advocacy groups, human rights bodies and other government agencies. There is an exchange of information and consultation on the tribunals' processes, caseloads, and relevant legislative and other developments.

The tribunals hold regular liaison meetings with the Department to discuss caseload trends and general business issues.

## CATEGORIES OF DOCUMENTS

The tribunals maintain the following categories of documents:

- case files and departmental files;
- case records;
- decision records;
- audio recordings of proceedings;

- application and other forms;
- brochures and fact sheets;
- procedures;
- legal advices;
- reference and research materials;
- country advices;
- statistics; and
- administrative and policy files.

The tribunals do not have any documents available for purchase by the public.

## FACILITIES FOR ACCESS TO INFORMATION

The tribunals provide access to documents under the Migration Act or under the FOI Act by supervised access to the original documents and/or by providing copies of documents. Access is available at each of the tribunals' registries.

The tribunals maintain an internet website which provides electronic access to certain statistical information, policies and procedures, application and other forms and reference materials.

## ACCESS TO DOCUMENTS UNDER THE MIGRATION ACT

Section 362A of the Migration Act provides that MRT applicants, or persons acting on behalf of MRT applicants including their representatives, are entitled to have access to any written material, or a copy of any written material, given or produced to the MRT for the purposes of the review. This right of access means that most requests for access received by the MRT are dealt with outside the FOI Act.

Applicants can obtain access to documents held by the MRT relating to their review application by making a written request using form MR16 Request for Access to Written Material Held by the Tribunal available from the tribunals' registries or at [www.mrt-rrt.gov.au](http://www.mrt-rrt.gov.au). No fee applies.

During 2010–11, the MRT received 1,729 requests for access under section 362A of the Migration Act, and finalised 1,714 requests.

## **ACCESS TO DOCUMENTS UNDER THE FOI ACT**

Any person may make a request under the FOI Act for access to documents held by the tribunals. The request must be made in writing and set out sufficient details to identify the information sought. The MR3 form: Request for access to documents (*Freedom of Information Act 1982*) for seeking access to documents is available from the tribunals' registries or the tribunal website. People applying for access are asked to provide a fax number or a postal or email address to which the requested information can be sent and to provide a daytime phone number in case there is a need to seek further information.

There are no application fees or charges payable in relation to a request by a person for access to their personal information; however charges may apply if a request is made for other information.

During 2010–11, the tribunals received 861 requests for access under the FOI Act, and finalised 734 requests.

As part of the reforms to the FOI Act, the tribunals are required to make available information released in response to FOI requests (subject to certain exemptions) within 10 working days after the day on which a person is given access to the document. Information released by the tribunals under the FOI Act is described in the "disclosure log" that is published on the tribunals' website. For the period ending 30 June 2011, no requests for information described in the "disclosure log" have been made.

## **INITIAL CONTACT FOR INQUIRIES**

Requests for access to documents under section 362A of the Migration Act should be addressed to the registry dealing with the case.

Initial inquiries concerning access to documents or other matters relating to FOI may be made at any registry. An FOI request can be made at any registry. Addresses and contact information for the tribunals' registries are provided on page 2 of this report.

# APPENDIX 3 – ADDITIONAL STAFFING STATISTICS

The following membership and staffing statistics are provided in addition to those set out in Part 4 of the Report.

## ONGOING AND NON-ONGOING STAFF

	30 June 2011			30 June 2010			30 June 2009		
	Women	Men	Total	Women	Men	Total	Women	Men	Total
Ongoing full-time	146	93	239	140	89	229	133	88	221
Ongoing part-time	25	6	31	31	6	37	30	6	36
Non-ongoing full-time	7	6	13	4	1	5	6	4	10
Non-ongoing part-time	1	0	1	0	0	0	0	0	0
Casual	0	0	0	1	0	1	1	0	1
<b>Total</b>	<b>179</b>	<b>105</b>	<b>284</b>	<b>176</b>	<b>96</b>	<b>272</b>	<b>170</b>	<b>98</b>	<b>268</b>

## MEMBERS AND STAFF BY LOCATION 30 JUNE 2011

	Sydney	Melbourne	Brisbane	Adelaide	Perth	Total
Members	48	31	6	2	2	89
Staff	195	89	0	0	0	284
<b>Total</b>	<b>243</b>	<b>120</b>	<b>6</b>	<b>2</b>	<b>2</b>	<b>373</b>

## MEMBERS AND STAFF BY AGE 30 JUNE 2011

Age	Staff	Members
Under 25	7	0
25 to 34	74	0
35 to 44	85	25
45 to 54	74	37
55 to 64	37	25
Over 65	7	2

# APPENDIX 4 – LIST OF REQUIREMENTS

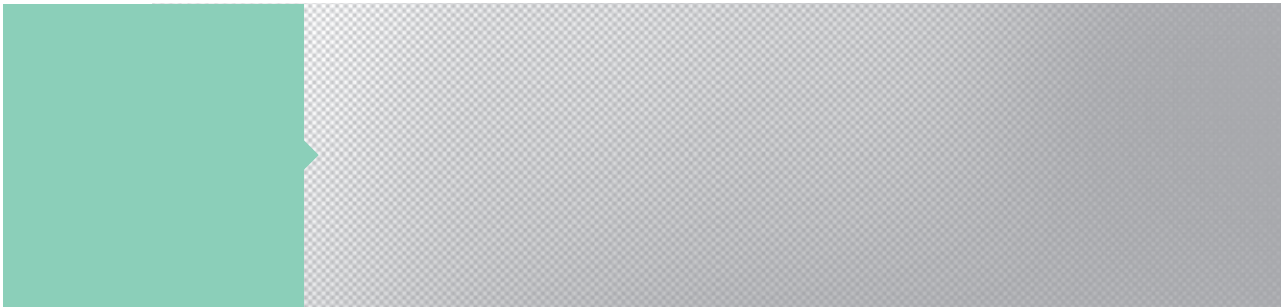
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The cover features a dark grey vertical bar on the left with a halftone pattern. A white arrow points from the left towards the title. The title is in white text on a grey background. Below the title is a dark grey horizontal bar with white text. The bottom half of the cover is a green-to-white gradient with a halftone pattern.

# GLOSSARY OF TERMS AND ABBREVIATIONS

TO PROVIDE VISA APPLICANTS AND SPONSORS WITH INDEPENDENT, FAIR, JUST,  
ECONOMICAL, INFORMAL AND QUICK REVIEWS OF MIGRATION AND REFUGEE DECISIONS

AASB	Australian Accounting Standards Board
AAT	The Administrative Appeals Tribunal is a statutory body that provides independent merits review of a range of government decisions
Access to documents	The tribunals allow access to documents they hold in accordance with the Migration Act and the FOI Act
Act, the	The Migration Act 1958 (the Act) is the principal legislation which establishes the tribunals and sets out their functions, powers and procedures. The Act is the legislative basis for all decisions reviewable by the tribunals
AEIFRS	The Australian Equivalents to International Financial Reporting Standards
affirm	To ratify the decision under review – the original decision remains unchanged and in force
AIAL	Australian Institute of Administrative Law
ANAO	The Australian National Audit Office is a specialist public sector practice providing a full range of audit services to the Parliament and public sector agencies and statutory bodies
ANU	The Australian National University
applicant	The applicant for review
APEC	Asia-Pacific Economic Cooperation
appropriations	Amounts authorised by Parliament to be drawn from the Consolidated Revenue Fund or Loan Fund for a particular purpose, or the amount so authorised. Appropriations are contained in specific legislation – notably, but not exclusively, the Appropriation Acts
APS	The Australian Public Service
APS employee	A person engaged under section 22 or a person who is engaged as an APS employee under section 72 of the Public Service Act 1999
ARC	The Administrative Review Council

asylum seeker	An asylum seeker is a person who has left their country of origin has applied for recognition as a refugee in another country and is awaiting a decision on their application
AustLII	The Australasian Legal Information Institute publishes a website that provides free internet access to Australian legal materials including published MRT and RRT decisions
authorised recipient	A person authorised by the applicant to do things on behalf of the applicant that consist of or include receiving documents in connection with a review
AWA	Australian Workplace Agreement
bridging visa	A bridging visa is a temporary visa generally granted to eligible non-citizens to enable them to remain lawfully in Australia for one of a number of specified reasons the most common being while they are awaiting the outcome of application for a substantive visa
case	It is the tribunals' practice to count multiple applications for review as a single case where the legislation provides that the applications for review can be handled together usually where members of a family unit have applied for the grant of visas at the same time
CaseMate	CaseMate is the tribunals' case management system. It is a customised database that contains in electronic form information on individual cases
CDS	The Commonwealth Disability Strategy recognises that the Australian Government has an impact on the lives of people with disabilities through its many programs services and facilities
CEO	The Chief Executive Officer is the Principal Member who is responsible for the operations and administration of the tribunals

Chief Financial Officer	The Chief Financial Officer is the executive responsible for both the strategic and operational aspects of financial planning management and record-keeping in APS departments and agencies. The Registrar is the Chief Financial Officer of the Tribunals
COAT	The Council of Australasian Tribunals
Comcare	A statutory authority responsible for workplace safety rehabilitation and compensation
Commonwealth Ombudsman	The Commonwealth Ombudsman considers and investigates complaints about Australian Government departments and agencies including the tribunals
competitive tendering and contracting	The process of contracting out the delivery of government activities previously performed by an agency to another organisation. The activity is submitted to competitive tender and the preferred provider of the activity is selected from the range of bidders by evaluating offers against predetermined selection criteria
constitution	Constitution is the formal process by means of which the Tribunal is constituted and a case allocated to a member for the purposes of a particular review. Once constituted as the Tribunal for the purposes of a particular review a member is responsible for the decision-making processes and the decision of the Tribunal for that review
consultancy	A consultancy is one type of service delivered under a contract for services. A consultant is an entity engaged to provide professional independent and expert advice or services and may be an individual a partnership or a corporation
corporate governance	The process by which agencies are directed and controlled. It is generally understood to encompass authority accountability stewardship, leadership direction and control



CPA	The Commonwealth Public Account
CSS	Commonwealth Superannuation Scheme
current assets	Cash or other assets that would, in the ordinary course of operations, be readily consumed or convertible to cash within 12 months after the end of the financial year being reported
current liabilities	Liabilities that would in the ordinary course of operations, be due and payable within 12 months after the end of the financial year under review
DIAC	The Department of Immigration and Citizenship. Officers of DIAC hold delegations to make the primary decisions reviewable by the tribunals
decision statement	The formal document which sets out the Tribunal decision and reasons in writing for a particular review
Deputy Principal Member	The Deputy Principal Member assists the Principal Member in relation to the operations of tribunals
Deputy Registrar	The Deputy Registrar of the Tribunals assists the Registrar
Department	The Department of Immigration and Citizenship (also DIAC)
DFAT	The Department of Foreign Affairs and Trade
District Registrar	District Registrars assist the Registrar. A District Registrar is responsible for day to day operations and management of a tribunal registry
EL	Executive level officer of the APS
executive officer	The executive officer is the Principal Member. The Principal Member is responsible for the overall operation and administration of the Tribunals
expenditure	The total or gross amount of money spent by the Government on any or all of its activities
FCA	The Federal Court of Australia
FCAFC	The Full Court of the Federal Court of Australia

Finance	The Department of Finance and Deregulation
financial results	The results shown in the financial statements of an agency
FMA Act	The Financial Management and Accountability Act 1997 is the principal legislation governing the collection payment and reporting of public moneys, the audit of the Commonwealth Public Account and the protection and recovery of public property. FMA Regulations and Orders are made pursuant to the FMA Act
FMCA	The Federal Magistrates Court of Australia
FMO	Finance Minister's Orders
FOI	Freedom of Information
FOI Act	The Freedom of Information Act 1982 (the FOI Act) creates a legally enforceable right of public access to documents in the possession of agencies
former visa holder	A person who previously held a visa. For example, a person whose visa has been cancelled
GST	Goods and Services Tax (GST) is a broad-based tax of 10% on most goods, services and other items sold or consumed in Australia
Guidance on the Assessment of Credibility	This paper provides an overview of general principles concerning the assessment of credibility of applicants and witnesses giving evidence before the MRT and the RRT. It also contains information about the practices that may be observed by the Tribunals when undertaking an assessment of credibility

Guide to Refugee Law in Australia	The Guide to Refugee Law in Australia was developed in 1996 and is maintained by the Legal Services Section as a reference tool for members and staff of the RRT. It contains an analysis of the legal issues relevant to the determination of refugee status in Australia and is regularly updated to reflect developments in the law
HCA	The High Court of Australia
hearing	An appearance by a person before either the MRT or the RRT. The appearance may be in person, or by video or telephone link
IARLJ	The International Association of Refugee Law Judges
IASB	International Accounting Standards Board
IFRS	International Financial Reporting Standards
IPAO	the Independent Protection Assessment Office makes and reviews assessments of protection claims made by offshore entry persons who cannot apply for a visa unless permitted to do so by the Minister personally. These assessments are not reviewable by the MRT or RRT. Members and staff who are among those appointed as reviewers and assessors are on leave of absence from the tribunals while conducting those duties.
IT	Information technology
Management Board	The Management Board (the Board) is a body that manages the strategic operations of the tribunals. It consists of the Principal Member, the Deputy Principal Member, the Registrar, the Deputy Registrar and Senior Members
jurisdiction	Jurisdiction defines the scope of the tribunals' power to review decisions

Legal Services Directions	Issued by the Attorney-General under the Judiciary Act 1903, the Legal Services Directions require Chief Executives of agencies to ensure that their agencies' legal services purchasing, including expenditure, is appropriately recorded and monitored and that, by 30 October each year, the agency makes publicly available records of the legal services expenditure for the previous financial year
Member	A member is constituted as the MRT or the RRT for the purposes of a particular review and is responsible for the decision-making process and the decision of the MRT or the RRT for that review. Up to three members may be constituted as the MRT
merits review	Merits review is the administrative reconsideration of the subject matter of the decision under review
MIAC	The acronym MIAC is used to identify the Minister for Immigration and Citizenship in abbreviated court citations
migration agent	A migration agent is someone who uses knowledge of migration law and procedures to advise or assist a person who is applying for a visa or in other transactions with DIAC or the tribunals. They may be a lawyer and may work in the private or not-for-profit sector. A migration agent operating in Australia is required by law to be registered with the MARA
Minister	The Minister for Immigration and Citizenship
MRT	The Migration Review Tribunal
non-ongoing APS employee	An APS employee who is not an ongoing APS employee. A temporary employee engaged for a specified term or the duration of a specified task
notification	The act of formally making known or giving notices
OHS	Occupational health and safety

OMARA	The Office of the Migration Agents Registration Authority undertakes the role of regulator to the migration advice industry. It is responsible for registration, complaints, professional standards, education and training for migration agents
ongoing APS employee	A person engaged as an ongoing APS employee as mentioned in paragraph 22(2)(a) of the Public Service Act 1999. A person employed on a continuing basis
OPA	Official Public Account
operations	Functions, services and processes performed in pursuing the objectives or discharging the functions of an agency
outcomes	The results, impacts or consequence of actions by Government on the Australian community
outputs	The goods or services produced by agencies on behalf of Government for external organisations or individuals. Outputs include goods and services produced for other areas of Government external to an agency
PAES	Portfolio Additional Estimates Statements
PBS	Portfolio Budget Statements
performance pay	Also known as performance-linked bonuses and usually taking the form of a one-off payment in recognition of performance. Retention and sign-on payments are not considered to be performance pay and nor is performance-linked advancement which includes advancement to higher pay points which then becomes the employee's nominal salary
PMD	Principal Member Direction
PRC	The People's Republic of China
primary decision	A primary decision is the decision subject to review by either the MRT or the RRT

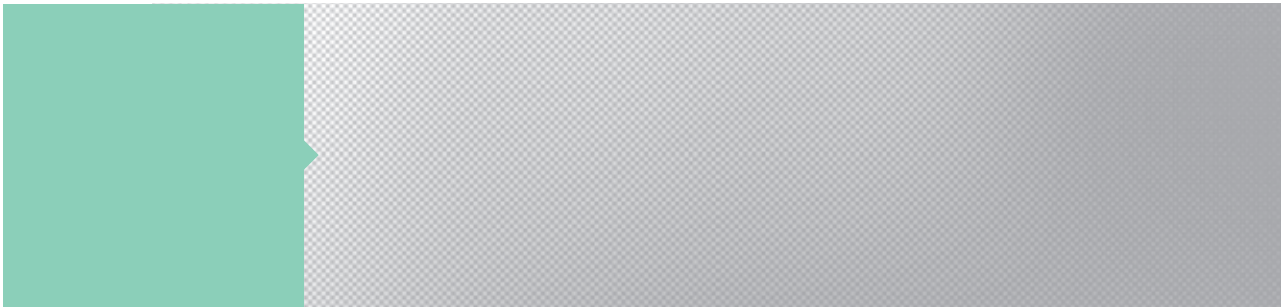
Principal Member	The Principal Member is the executive officer of the tribunals and is responsible for the tribunals' overall operations and administration; ensuring that their operations are as fair, just, economical, informal and quick as practicable; allocating work determining guidelines and issuing written directions
Principal Registry	The Principal Registry is the tribunals' national office. The tribunals' executive functions are performed at the Principal Registry
protection visas	Protection visas are a class of visas a criterion for which is that the applicant for the visa is a non-citizen in Australia to whom Australia has protection obligations under the Refugees Convention, or a non-citizen in Australia who is the spouse or a dependant of a non-citizen who holds a protection visa
PSS	Public Sector Superannuation Scheme
purchaser/provider arrangements	Arrangements under which the outputs of one agency are purchased by another agency to contribute to outcomes. Purchaser/provider arrangements can occur between Australian Government agencies or between Australian Government agencies and State/Territory government agencies or private sector bodies
Refugees Convention	Convention Relating to the Status of Refugees done at Geneva on 28 July 1951 as amended by the Protocol Relating to the Status of Refugees done at New York on 31 January 1967
Registrar	The Registrar of the tribunals assists the Principal Member with the administrative management of the tribunals
Registry	A registry is an office of the tribunals
Regulations	The Migration Regulations 1994 unless otherwise indicated

remit	To send the matter back for reconsideration. A Tribunal may remit a decision to DIAC when it decides that a visa applicant has satisfied the criteria which the primary decision-maker found were not satisfied, or that the visa applicant is a refugee
representative	A representative is someone who can forward submissions and evidence to the tribunals, contact the tribunals on the applicant's behalf, and accompany the applicant to any meeting or hearing arranged by the tribunals. With very limited exceptions, a representative must be a registered migration agent
review applicant	A review applicant is a person who has made an application for review to either of the tribunals
review application	A review application is an application for review that has been made to either of the tribunals
reviewable decision	A reviewable decision is a decision that can be reviewed by either the MRT or the RRT. Reviewable decisions are defined in the Act and the Regulations
RRT	The Refugee Review Tribunal
RSD	Refugee status determination
Senior Management Group	The Senior Management Group (SMG) comprises the Registrar, the Deputy Registrar, District Registrars and Directors. This group meets at least once a month and deals with agency management and planning issues
Senior Member	Senior Members provide guidance to and are responsible for members within each of the registries
service charters	It is Government policy that agencies which provide services directly to the public have service charters in place. A service charter is a public statement about the service an agency will provide and what customers can expect from the agency
SES	Senior Executive Service of the APS

set aside	To revoke the decision under review – the original decision is deemed not to have been made. A Tribunal sets aside a decision when it decides that the primary decision should be changed. When a Tribunal sets aside a primary decision it may substitute a new decision in place of the primary decision
source country	The country of nationality or citizenship of a visa applicant
SSAT	The Social Security Appeals Tribunal
statutory objective	The tribunals' statutory objective is to provide a mechanism of review that is fair, just, economical, informal and quick. The MRT and the RRT's statutory objectives are set out in sections 353 and 420 respectively of the Act
Tribunal	The Migration Review Tribunal (the MRT) or the Refugee Review Tribunal (the RRT)
tribunals	The Migration Review Tribunal (MRT) and the Refugee Review Tribunal (RRT), unless otherwise indicated
Tribunals' Plan	The Tribunals' Plan 2011-14. It is a high level document setting out the tribunals' key strategic aims and priorities and core values
UNHCR	The United Nations High Commissioner for Refugees
VRB	The Veterans' Review Board
visa applicant	A visa applicant is a person who has made a visa application
workplace diversity	The concept of workplace diversity values and utilises the contributions of people of different backgrounds, experiences and perspectives.









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