

***Handling complaints about the conduct of Members of the Migration Review Tribunal and Refugee Review Tribunal***

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**Introduction**

As occurs with other tribunals, complaints are from time to time made about the conduct of our Tribunal Members. Complaints are taken seriously and investigations are conducted quickly and in an impartial and procedurally fair way.

The [Tribunals' Plan](#) 2007-2010 states that our reputation depends on professional, effective and courteous dealings with applicants, their representatives and supporters. The Tribunals' key performance indicators are set out in the Portfolio Budget Statements. One important indicator relates to complaints, in respect of which we have a target of less than 5 complaints per 1,000 decided cases.

The Tribunals' [Service Charter](#) sets out the standards of service that our 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 of the Tribunals' website.

While our Service Charter focuses on applicants and representatives, we also recognise that complaints may be made by other persons with whom we have dealings, including interpreters and members of the public. Complaints of the latter kind are very rare.

**Members' role and accountability**

Delivering, and being seen to deliver, independent, fair and impartial decisions is of critical importance to the integrity of the review on the merits role of the MRT and the RRT.

The Tribunals' [Member Code of Conduct](#) reinforces this objective. Among other things it says that Members are expected to treat applicants,

interpreters, representatives, witnesses and any other persons having business with the Tribunals with courtesy, respect and dignity.

The Tribunals keep records in relation to complaints. The incidence and outcome of complaints in relation to the conduct of reviews by a Member is one of the matters taken into account during the annual Member performance appraisal process. The objectives of the performance appraisal process are to foster and maintain the highest standards of performance; to recognise excellence; and to identify and address areas where performance may be improved.

Our records show that the majority of our complaints are complaints by applicants or their representatives about the hearing and decision-making aspects of cases. Other complaints may relate to the timeliness of reviews or aspects of decision records.

We include in our Annual Reports information on performance against service charter service standards, complaints data, trend analysis, and the Tribunals' responses to complaints.

### **Tribunals' complaint handling procedures**

If a complaint is made concerning a Member, the complaint is investigated by a Senior Member, who reviews case records, listens to the recording of any hearing held and discusses the complaint with the presiding Member. Investigations are conducted discreetly and sensitively. Where appropriate, measures are taken to protect the identity of the complainant or other individuals or confidential or sensitive information.

The Senior Member then provides a written report to me outlining conclusions and any recommendations. I consider the report and respond to the complainant in writing. A response letter to the complainant will generally refer to:

- how the Tribunal carried out the investigation;
- what the Tribunal found;
- whether the complaint is upheld and reasons for the decision; and
- if appropriate, what the Tribunal is doing to remedy the situation.

We aim to provide a written response to the complaint within 20 working days of receipt of the complaint. I am pleased to advise that 100% of Member complaints dealt with in 2009-10 were responded to within 20 working days.

The response will include advice about how the person can contact the Commonwealth Ombudsman, if dissatisfied with the Tribunal's response. I or the Deputy Principal Member will initiate any remedial or other action considered appropriate on a case by case basis.

A complaints and compliments button on the homepage of the Tribunals website makes it easy for clients to make a complaint or offer a compliment. Oral complaints can also be made and, with the complainant's agreement, they are recorded by staff and referred to me.

Complaints are recorded in a central database, with limited access to key personnel only, and monitored by the Tribunals. As part of our commitment to improve client services, about once a quarter we will discuss complaint statistics and outcomes, including any lessons learnt, with Members at Member meetings.

### Overview of complaints data

In the course of 2009-10 (as at 1 April 2010) we have received 10 complaints in relation to the conduct of Members. This is a relatively small number, particularly when one looks at the number of cases that the Tribunals review annually.

Table 1 sets out the number of Member complaints finalised over the last 4 years and the number of cases decided in those years.

**Table 1 – Breakdown of complaints by Tribunal and financial year (as at 1/04/2010)**

	2009-10	2008-09	2007-08	2006-07
<b>MRT</b>				
Member complaints resolved	7	18	19	20
Cases decided	5,823	5,767	5,219	6,203
Complaints per 1,000 cases	1.2	3.1	3.6	3.2
<b>RRT</b>				
Member complaints resolved	3	10	9	9
Cases decided	1,601	2,462	2,318	3,102
Complaints per 1,000 cases	1.9	4	3.9	2.9

From this table it is evident that the rate of complaints has remained steady over the last four financial years. It is also apparent that a larger proportion of complaints relate to the MRT than to the RRT.

So far this financial year I considered that 3 of 10 (30%) Member complaints resolved related to matters that could have been handled more appropriately. Of these complaints, 2 were upheld and 1 partially upheld resulting in an apology being made in one case and in matters being re-allocated to other Members in the other cases. With respect to the remaining 7 matters, where the Tribunals did not consider that there was substance to the complaints, the complainants to date appear not to have sought external review with the Commonwealth Ombudsman.

## **Conclusion**

For most applicants appearing before the Tribunals, the outcome of the proceedings is a matter of life-changing importance. Indeed, for some, the Tribunal's decision may have life and death implications. Fully appreciating that they are called on to make decisions of utmost significance to each individual who seeks review before them, my Members approach their task with great care, seeking to do their very best to understand the merits of the individual's case and, particularly in RRT cases, the complexity of the conditions in the relevant country.

The way my Members perform their task has contributed significantly to the high reputation Australia's refugee and migration determination processes enjoy throughout the world. A robust system for dealing with complaints about Tribunal Members is an important way of ensuring the maintenance of that high reputation.