No. of Complaints Received/On Hand

1984/85	Oct	Nov	Dec	Jan	Feb	Mar
Complaints received:						
Oral	1836 (86%)	1633 (83%)	1385 (85%)	1552 (83%)	1594 (85%)	1674 (83%)
Written	311 (14%)	341 (17%)	239 (15%)	327 (17%)	288 (15%)	354 (17%)
TOTAL Written complaints on hand	2147 2011	1974 2002	1624 1960	1879 1964	1882 1932	2028 1903

The Courts

Scope of Review Under the AD(JR) Act

The requirement under the AD(JR) Act that the decision to be reviewed must be 'of an administrative character' was not satisfied according to the Federal Court by a decision of a Court of Petty Sessions refusing to renew registration of a motor vehicle: Registrar of Motor Vehicles -v- Dainer and Anor. (17 February 1985). The case may be contrasted with the now established view that magistrates' decisions in committal proceedings fall within the Act's ambit.

The Federal Court in Bayley -v- Osborne (19 December 1984) was not satisfied that the requirement under the AD(JR) Act that the decision to be reviewed must be made 'under an enactment' had been met. Mr Justice Davies held that a direction to work standard public service hours (as opposed to flexi-time hours) was given not under an enactment but pursuant to the power of any employer to give reasonable and lawful directions to an employee.

Failure to Take Into Account a Relevant Consideration

The Federal Court in Peko-Wallsend Ltd. and Ors. -v- Minister for Aboriginal Affairs and Anor. (15 February 1985) held that where

new facts concerning the issues before a Minister are brought to his attention before a decision is made, he is not entitled to disregard those facts. It was also stated that, where such information was in the possession of the Department, knowledge of it can be attributed to the Minister.

An application to review a decision refusing an application for a permanent entry permit was granted by the Federal Court on the grounds that the Minister had failed to take into account relevant considerations and that the decision was unreasonable: Prasad -v- Minister for Immigration and Ethnic Affairs (26 February 1985).

Promotion Appeals Committees

An application to review a decision of a PAC was dismissed by the Federal Court as it had not been established that there was no relevant evidence to support the decision, i.e. that there was something in the nature of a substantial failure to make full inquiries, or that there had been a denial of natural justice: Chamberlain -v- Banks and Ors. (25 February 1985). The Court stated that in testing whether there has been compliance with the rules of natural justice, it looks to matters of substance, such as a significant failure in procedure, and does not examine what might or might not have been done with each item of evidence.

Errors in Statement of Reasons under the AD(JR) Act

An application to review a deportation decision was granted by the Federal Court where there were factual errors in the statement of reasons provided under the AD(JR) Act and misleading statements in the submission put before the decision maker: Lally -v- Minister for Immigration and Ethnic Affairs (17 January 1985).

Repatriation

The High Court in The Repatriation Commission -v- O'Brien (27 February 1985) dismissed an appeal from a decision of the Full Federal Court which had set aside a decision of the AAT and granted a claim for a war pension on the basis of essential hypertension related to the applicant's accepted disability of anxiety hysteria. The High Court agreed with the Federal Court's formulation of what amounted to sufficient evidence to satisfy the standard of proof (which is a reverse onus of proof) under the Act.

Social Security

The High Court in Harris -v- Director-General of Social Security (1985) 59 ALJR 194 set aside the order of the Full Federal Court and remitted the matter back to the AAT. The question in issue was how the annual rate, as opposed to annual amount, of income of a pensioner should be calculated. The Court held that the current rate, rather than the predicted future amount or rate, of income expressed as a yearly rate was the correct concept.

Costs

A decision of the AAT which ordered a successful applicant under the Compensation (Commonwealth Government Employees) Act 1971 to pay her own costs was overturned by the Federal Court: Miller -v- Australian Telecommunications Commission (22 February 1985).

STATISTICAL TRENDS

Statistics available for 1985 indicate an increase in the number of applications in the broadcasting, customs, taxation, migration and repatriation jurisdictions.

Jurisdiction	No. of Applications under the AD(JR) Act			
	1982	1983	1984	1985 1 Jan-11 Apr
Income Tax Assessment Act 1936	5	25	42	10
Customs legislation*	9	6	35	11
Migration Act 1958	26	33	36	11
Public Service Act 1922	31	15	12	3
Broadcasting and Television Act 1942	5	4	7	8
Repatriation Act 1920	2	5	9	6
Other	40	76	83	13
TOTAL	118	164	224	62

* Includes legislation relating to dumping and countervailing duties.

Freedom of Information

Secrecy Provision Exemption

The AAT has held in two cases that documents are exempt from access because of secrecy exemptions in legislation which apply specifically to information of a kind contained in the documents and which prohibit persons from disclosing information of that kind: Re Lianos and Secretary to the Department of Social Security (19 February 1985) and Re Canopy Manufacturers and John Challier and Department of Aviation (25 January 1985). In the first-mentioned case, the documents in question were ministerial briefings and communications relating to the so-called 'Greek conspiracy case'. In the second-mentioned case, the documents in question related to an investigation and report on the assumed crash of a light aircraft.

Public Interest Test

The disclosure of documents in two cases was held by the AAT to be contrary to the public interest: Re Burns and Australian National University (1 February 1985) and Re Lianos and Secretary to the Department of Social Security (19 February 1985). In the first-mentioned case, which involved tapes of University Council meetings, the Tribunal held that the public interest in free debate and deliberation during such meetings, which it likened to those of Cabinet, was not outweighed by the public interest in the maintenance of the rights of the applicant as an individual peculiarly affected. In the Lianos case (which involved Ministerial documents) the Tribunal held that, on balance, the public interest in protecting confidential relationships between Ministers and promoting candid and frank advice and opinion outweighed the public interest in disclosing the documents. The Tribunal referred to Sankey -v- Whitlam (1978) 142 CLR 1 in listing considerations relevant to evaluating a public interest issue, including: the age of the document, the importance of the issues discussed, the extent to which prematurely disclosed information may be misunderstood by an ill-informed public and the circumstances in which the communications passed. In another case, Re Wertheim and Secretary to the Department of Health (20 December 1984), the Tribunal held that it was in the public interest for reseachers to know, both for their own sake and for the sake of improving the general quality of medical reseach, why their applications for medical research grants had not been granted.